United States Court of Appeals
for the Second Circuit

APPENDIX

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77-4183, 4184, 4191

United States Court of Appeals
FOR THE SECOND CIRCUIT

WESTERN UNION INTERNATIONAL, INC.,
RCA GLOBAL COMMUNICATIONS, INC.,
and ITT WORLD COMMUNICATIONS, INC.,
Petitioners,

—against—

FEDERAL COMMUNICATIONS COMMISSION,
UNITED STATES OF AMERICA and
AMERICAN TELEPHONE & TELEGRAPH COMPANY,
Respondents,

and

AMERICAN TELEPHONE & TELEGRAPH COMPANY,
TRT TELECOMMUNICATIONS CORPORATION,
Intervenors.

PETITION FOR REVIEW OF AND ON APPEAL FROM MEMORANDUM OPINIONS AND ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION

JOINT APPENDIX

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UNITED STATES COURT OF
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GENERAL AGREEMENT FOR
LEASING OF CIRCUITS

THIS AGREEMENT, made this 23rd day of April 1968, between the AMERICAN TELEPHONE AND TELEGRAPH COMPANY, ("Lessor"), a New York corporation, having an office at 32 Avenue of the Americas, New York, New York and RCA Communications, Inc. ("Lessee"), a corporation having an office at 60 Broad Street, New York, New York.

WITNESSETH:

WHEREAS, pursuant to various letter agreements, Lessor has leased to Lessee from time to time voice-grade circuits within the Continental United States for use by Lessee in the conduct of its international and overseas business, and

WHEREAS it is contemplated that Lessor will lease to Lessee additional voice-grade circuits for such purpose from time to time, and

WHEREAS the parties desire to adopt a simplified method of administering the leasing of such circuits,

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained, covenant and agree with each other as follows:

1. (a) Lessor shall continue to lease to Lessee those specific circuits which Lessor is leasing to Lessee

on the effective date of this Agreement pursuant to outstanding letter agreements, which circuits are identified in Exhibit A attached hereto and made a part hereof; provided, however, that, commencing as of the effective date of this Agreement, the lease of said circuits shall be on the terms and conditions herein stated and subject to all the provisions hereof; and provided, further, that the outstanding letter agreements between PHILCOMSAT ~~Lessor~~ and RCA Global ~~Lessee~~ governing the lease of said circuits identified in Annex ~~Exhibit~~ A shall be deemed cancelled and superseded by this Agreement as of its effective date, except with respect to any obligations of Lessor to make credit allowances or of Lessee to make payments already accrued under said letter agreements.

(b) Lessor will lease to Lessee, upon reasonable notice and subject to the availability of facilities in each case, such additional voice-grade circuits within the Continental United States (i.e., the District of Columbia and the several states, excluding Alaska and Hawaii) as Lessor and Lessee may agree upon from time to time. Said circuits shall be leased on the terms and conditions herein stated and subject to all the provisions hereof.

(c) The terms "circuit", "circuits", or "circuits leased hereunder" as used herein shall refer to both those circuits identified in Exhibit A and to such additional circuits as Lessor may lease to Lessee hereunder.

2. (a) The circuits leased hereunder shall be voice-grade circuits, each having a bandwidth of approximately 2,800 cycles per second.

(b) Lessee shall have the right to derive communication channels from the circuits leased hereunder by subdivision of the frequency band furnished or by other means. Terminal equipment required for such purpose shall be provided and maintained by Lessee at its own expense.

(c) The circuits leased hereunder may be used by Lessee for the provision of any services which it is or may be authorized to furnish by the cognizant regulatory agencies. Circuits leased hereunder shall not be used for an unlawful purpose.

✓(d) This Agreement: 1) Does not apply to the furnishing by Lessor to Lessee of any services or facilities under Lessor's published tariffs; 2) In no way affects the right of Lessee to obtain facilities or services from Lessor under Lessor's published tariffs; and 3) Does not preclude any other agreements or arrangements which Lessee and Lessor may make or agree upon with regard to the furnishing by Lessor of services or facilities.

3. (a) Circuits leased to Lessee by Lessor pursuant to subparagraph 1(b) shall be ordered in accordance with the following procedure:

(1) Lessee shall issue a serially-numbered order for each circuit it desires to lease. The order, called a "Circuit Rental Order" (CRO) shall be substantially in the form of Exhibit B attached hereto and made a part hereof and shall contain the information called for in Exhibit B to the extent applicable in the particular case.

(2) Each CRO issued by Lessee shall be signed by a duly authorized representative of Lessee and shall be submitted to Lessor in duplicate, attention:

Sales Manager
American Telephone and Telegraph Company
Long Lines Department
330 Madison Avenue, 4th Floor
New York, New York 10017

(b) When the CRO is received by Lessor, Lessor shall promptly notify Lessee of the receipt of the order and shall make a reasonable effort to make the circuit as requested available for use by the Lessee on the date requested by the Lessee. After the date upon which the circuit called for by the CRO has been accepted for use by the Lessee, Lessor shall enter said date on the CRO, sign the CRO by a duly authorized representative, and transmit a signed copy to Lessee, attention:

Manager, Plant Operations
Engineering
RCA Communications, Inc.
60 Broad Street, Room 435
New York, New York 10004

(c) (1) Lessee may modify or terminate the lease of any circuit leased hereunder by issuance of a CRO in accordance with the procedure set forth in subparagraph 3(a); provided however, that subject to paragraph 5(a) below, the Lessor must accept a CRO terminating a circuit.

(2) Modification or cancellation of a CRO prior to the completed effective date shall be made by Lessee's issuance of a supplemental CRO bearing the same serial number as the original CRO followed by a number to indicate the number of the supplement. Supplemental CROs shall be issued in accordance with the procedure set forth in subparagraph 3(a); provided however, the Lessor must accept a supplemental CRO terminating a CRO.

(d) Any circuit leased to Lessee hereunder which terminates at an overseas cable station or a satellite earth station may be shared with other international communication common carriers with which Lessor has also executed a similar "General Agreement for Leasing of Circuits", subject to the following conditions:

(1) Lessee and all the other carriers sharing the circuit shall be jointly and severally liable for all charges applicable to the circuit under this Agreement. The CRO issued by Lessee in the case of a circuit to be shared with other carriers shall name all carriers which are to share the use of the circuit with Lessee and specify the proportionate parts of the monthly charges applicable to the circuit to be billed to each carrier sharing the circuits.

In addition, the CRO shall contain a special endorsement signed by a duly authorized representative of each of the carriers which are to share the circuit with Lessee in which each said carrier agrees (i) to accept the circuit on a shared basis in accordance with the terms and conditions of this Agreement and (ii) to be jointly and severally liable for all charges applicable to the circuit under this Agreement.

(2) Except as otherwise provided in this subparagraph (d), CROs relating to circuits shared or to be shared with other carriers shall, when endorsed by all carriers sharing a circuit, be processed in accordance with the procedure set forth in subparagraphs 3(a) through 3(c).

(3) Lessee shall be free to make available to foreign recognized private operating agencies or foreign administrations, without application of the provisions of this subparagraph (d), only communication channels and not voice-grade circuits, which channels are derived from the subdivision of the frequency band of any voice-grade circuit leased hereunder, which transit the Continental United States and facilitate such agency or administration's provision of communications services between two or more foreign countries.

(e) CROs shall not be valid without the signatures required by this paragraph 3.

(f) CROs issued pursuant hereto shall be subject to all the terms and conditions of this Agreement.

4. (a) For each circuit leased to Lessee hereunder, Lessee shall pay to Lessor charges from the date the circuit has been accepted for use by the Lessee; said charges shall be computed in accordance with the applicable provisions of Exhibit C attached hereto and made a part hereof. The charges for the circuits included in Exhibit A are as specified in said Exhibit A and were computed in accordance with Exhibit C.

(b) Bills for total outstanding charges for all circuits leased to Lessee hereunder shall be rendered to Lessee monthly by Lessor. Such bills shall be paid by Lessee to Lessor no later than the last business day of the calendar month following the month in which the bills are rendered.

(c) If Lessee fails to make any payment required hereunder with respect to any circuit when such payment is due, Lessee's right of use of the circuit involved shall thereupon cease until all payments due with respect to said circuit have been made in full.

(d) Suspension or cessation of the use of any circuit leased hereunder in accordance with the provisions of subparagraph (c) of this paragraph 4 or subparagraph 5(a) herein shall not relieve Lessee of the obligation to make payments required hereunder throughout the duration of this Agreement.

5. (a) Except as otherwise provided in subparagraph (b) of this paragraph 5, the lease of each

circuit furnished hereunder shall continue for a minimum period of one month and thereafter until terminated by the issuance of a terminating CRO by Lessee to Lessor, but not later than the termination of this Agreement. Upon termination of the lease of a circuit, the monthly charge applicable to the circuit for the last month the lease is in effect shall be prorated in proportion to the number of days during which the circuit was furnished in the last month.

(b) To meet special requirements of Lessee, Lessor will lease circuits to Lessee hereunder for a period of less than one month. Requests for such circuits will be made through the CRO procedure provided for herein except that the CRO requesting the circuit shall specify the termination date and the lease shall automatically terminate on that date. Charges for such circuits shall be computed in accordance with the applicable provisions of Exhibit C.

6. (a) The characteristics and methods of operation of any equipment or circuits provided by Lessee and associated with any circuit leased hereunder shall be such as not to interfere with or impair service over any circuits of Lessor or the service of its associated, affiliated or connecting companies, cause damage to their plant, impair privacy of any communications over circuits of Lessor or such other companies or create hazards to the employees of any of them or the public.

Lessee shall bear the cost of any additional protective apparatus reasonably required to be installed because of the use of the leased circuit by Lessee. Lessor shall have the right to inspect any such equipment in order to determine compliance herewith. In the event that the characteristics or operation of such equipment or circuits of Lessee shall not be satisfactory in any of the foregoing respects, Lessor shall have the right to suspend use of the leased circuit by Lessee for the duration of any period of noncompliance.

(b) At a time agreeable to Lessee and Lessor, each circuit leased hereunder shall be made available to Lessor to make such tests and adjustments as may be necessary to maintain the circuit in satisfactory operating condition. If the parties fail to agree upon a time for testing and adjusting the circuit, the circuit shall be tested and adjusted at such time as Lessor shall specify. No interruption allowance will be made to Lessee for the time required for such tests and adjustments.

7. No credit shall be allowed for interruptions to any circuit leased hereunder of less than thirty minutes. Interruptions of thirty minutes or over, if not due to the negligence of Lessee or its customers, shall be credited to Lessee at the proportionate monthly charge in half-hour multiples for each half-hour or major fraction thereof of interruption; provided, however, that

no credit will be made of any amounts less than one dollar ($1.00) for an interruption. Except for such interruption allowance, Lessor shall not be liable to Lessee for any loss or damage sustained by reason of any failure in or breakdown of facilities associated with the leased circuit or for any interruption of service, whatsoever shall be the cause of such transmission failure, breakdown or interruption and whether negligent or otherwise and howsoever long it shall last.

8. No license under patents is granted by Lessor or shall be implied or arise by estoppel in favor of Lessee with respect to any apparatus, system or method used by Lessee in combination or in connection with any circuit leased hereunder. With respect to claims of patent infringement made by third persons, (a) Lessor will save Lessee harmless against claims arising out of the use by Lessee of the circuits per se, and (b) Lessee will save Lessor harmless against claims arising out of combining with, or using in connection with, the circuit any apparatus, system or method provided by Lessee or its customers.

9. The failure of either Lessor or Lessee to enforce any of its rights under the provisions of this Agreement or the waiver thereof in any instance shall not

be construed as a general waiver or relinquishment on its part of any of its rights under such provision but the same shall nevertheless be and remain in full force and effect.

10. No assignment of this Agreement, or of any rights thereunder, by Lessee shall be valid without the written consent of Lessor, which consent shall not be unreasonably withheld; provided however, that Lessee may freely assign this agreement to a legal successor or subsidiary of the Lessee or to a corporation controlling, or under the same control, as the Lessee.

11. The performance of this Agreement by the parties is contingent upon obtaining such govermental authorizations as may be required. Inability to secure the necessary authorization or approval with respect to any particular circuit or circuits, however, shall not be held to make this Agreement as a whole impossible of performance.

12. This Agreement shall become effective as of the 1st day of September, 1967 and shall continue thereafter from month to month, subject to termination by either party upon ninety (90) days' notice in writing to the other party.

012

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Agreement in duplicate the day and year first written above.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By H. M. Botkin
(Signature)

Assistant Vice President
(Title)

Attest:

H. A. Fisher
Assistant Secretary
(Corporate Seal)

RCA COMMUNICATIONS, INC.
(LESSEE)

By
(Signature)

President
(Title)

Attest:
Norman Mills
Asst. Secretary

(Corporate Seal)

(Attached to Agreement dated April 23, 19
between the American Telephone and
Telegraph Company and RCA Communications, Inc.)

Exhibit A

Circuit Designation	U.S. Terminal Points	Features	Monthly Rent
✓CO 1	New York-Calais	-	$ 580.60
✓CO 2	" - "	-	580.60
✓CO 3	" - "	1 Spare S.T.	588.10
✓CO 5	" -Mooers Forks	C2, 1 Spare S.T.	462.00
✓CO 9	" - "	C2	454.50
✓CO 27	" - "	C2	454.50
✓CO 31	" -Manahawkin	-	171.00
✓CO 53	" - "	C2	209.00
✓CO 55	San Francisco-San Luis Obispo	C2	389.00
✓CO 56	" - "	C2	389.00
✓CO 57	" - "	C2S	407.00
✓CO 60	New York-Tuckerton	-	192.60
✓CO 61	" - "	-	192.60
✓CO 62	" - "	-	192.60
✓CO 63	" - "	C2S, 1 Spare S.T.	256.10
✓CO 64	" - "	-	192.60
✓CO 65	" - "	-	192.60
✓CO 66	" - "	-	192.60
✓CO 70	San Francisco-Point Arena	-	231.25
✓CO 74	" - "	-	231.25
✓CO 75	San Francisco-Blaine	C2	861.30
✓CO 78	" -Point Arena	-	231.25
✓CO 79	" - "	-	231.25
✓CO 80	" -San Luis Obispo	C2S	407.00
✓CO 81	" - "	C2	389.00
✓CO 82	" - "	-	351.00

Exhibit A

Circuit Designation	U.S. Terminal Points	Features	Monthly Rent
✓CO 88	New York-Calais	-	$ 580.60
✓CO 91	" -Tuckerton	-	70.03 (a)
✓CO 12002	" - "	1 Spare S.T.	200.10
✓CO 12022	" -Andover/Mill Village	C2	521.56
✓CO 12024	" - " "	C2	173.85 (b)
✓CO 12028	" -Tuckerton	C2S	248.60
✓CO 12029	" - "	C2	230.60
✓CO 12030	" - "	C2	230.60
✓CO 12031	" - "	C2S	248.60
✓CO 12032	" - "	C2	230.60
✓CO 12033	" - "	C2	230.60
✓CO 12034	" - "	C2	230.60
✓CO 12035	" - "	C2	230.60
✓CO 12036	" - "	C2	230.60
✓CO 12037	" - "	C2	230.60
✓CO 12048	San Francisco-San Luis Obispo	C2S	407.00
✓CO 12060	New York-Tuckerton	C2	115.30 (c)
✓CO 12061	" - "	C2	230.60
✓CO 12062	" - "	C2	230.60
✓CO 12070	San Francisco-San Luis Obispo	C2S	407.00
✓CO 12074	" - "	C2S	407.00
✓CO 12086	New York-Calais	C2S	608.60
✓CO 12089	" -Tuckerton	C2S	248.60
✓CO 12099	" -Manahawkin	C2S	227.00
✓CO 12100	" - "	C2S	227.00
✓CO 12105	San Francisco-Blaine	-	842.30
✓CO 12106	" -San Luis Obispo	C2S	407.00

Exhibit A

Circuit Designation	U.S. Terminal Points	Features	Monthly Rent
✓CO 12214	Miami-Vero. Beach	C2S	$ 317.25
✓CO 12239	San Francisco-Brewster Flat	C2S	869.20
✓CO 12242	Miami-Florida City	-	97.20
✓CO 12243	" - "	-	97.20
✓CO 12244	" - "	C2S	153.20
✓CO 12245	" -Vero Beach	C2S	317.25
✓CO 12246	" - "	C2S	317.25
✓CO 12247	" - "	C2S	317.25
✓CO 12248	" - "	-	261.25
✓CO 12249	" -West Palm Beach	-	160.20
✓CO 12251	San Francisco-Brewster Flat	C2S	869.20
✓CO 12252	" - "	C2S	869.20
✓CO 12253	" - "	C2S	869.20
✓CO 12254	New York-Tuckerton	C2S	248.60
✓CO 12261	San Francisco-Brewster Flat	C2S	869.20
✓CO 12263	New York-Tuckerton	-	192.60
✓CO 12265	San Francisco-Blaine	C2S	870.30
✓CO 12293	" -San Luis Obispo	C2S	407.00
✓CO 12296	New York-Tuckerton	C2S	248.60
✓CO 12305	" - "	C2S	248.60
✓WF 3	New York-San Francisco	C2, 2 Spare S.T.'s	2,334.20
✓WF 4	" -Washington	C2, 2 Spare S.T.'s	409.00
✓WF 8	" -San Francisco	C2	2,319.20
✓WF 9.	" -Washington	C2, 2 Spare S.T.	409.00

Exhibit A

Circuit Designation	U.S. Terminal Points	Features	Monthly Rent
✓WF 12	New York-Laredo	-	$1,584.70
✓WF 21	" -San Francisco	C2, 1 Spare S.T.	2,326.70
✓WF 22	" -Washington	C2	394.00
✓WF 24	" - "	C2	394.00
✓WF 28	" -San Francisco	C2	2,319.20
✓WF 29	" - "	C2	2,319.20
✓WF 30	" -Miami	-	1,107.60
✓WF 31	" - "	-	1,107.60
✓WF 32	" - "	-	1,107.60
✓WF 33	" - "	C2S	1,163.60
✓WF 34	Miami-Fort Lauderdale	-	88.20
✓WF 35	" -West Palm Beach	-	160.20
✓WF 39	New York-Miami	C2S	1,163.60

NOTES:

(a) 8/22 of monthly rental. Remainder billed to ITT and WUI.
(b) 1/3 of monthly rental. Remainder billed to ITT and WUI.
(c) 1/2 of monthly rental. Remainder billed to ITT and WUI.

S.T. - Service Terminal
C2 - Special equalization for two point circuit
C2S - Special equalization for two point circuit arranged for switching

Exhibit B

CIRCUIT RENTAL ORDER

Serial Number: ____________________

Date: ____________________

uthorized By: Contract effective September 1, 1967 between American Telephone and Telegraph Company and ____________________
(Lessee)

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nstructions: Check appropriate box in each of the following paragraphs and furnish further detailed information as indicated. Must be signed and dated by authorized representative of Lessee.

.. Action Requested:
Lease New Circuit ☐
Modify Existing Circuit ☐
Terminate Existing Circuit ☐

. Date Desired: ____________________

3. Type of Lease:
Monthly ☐
Less than 30 days ☐ ; Specify Termination Date ____________

. Circuit Designation: ____________________
(CO #, WF #)

5. Circuit Terminals:

____________________ and ____________________

6. Circuit Conditioning:
None ☐
C2 ☐
C2S ☐

7. Remarks: ____________________

____

____
(Lessee)

____
(Signature and Title)

Date: ____________________

The above Circuit Rental Order was completed effective ____________________

Remarks: ____________________

____

American Telephone and Telegraph Company

Exhibit C

Charges for Voice-Grade Circuits

I. General

Charges for circuits leased hereunder consist of the following basic elements: (1) a fixed charge plus a mileage charge for the interexchange channel portion of the circuit; (2) charges for connecting each terminal specified in the applicable CRO or CROs to the circuit; and (3) charges for special conditioning and other special features, where applicable.

II. Circuits Leased on a Monthly Basis

1. Charge for the Interexchange Channel Portion of the Circuit

For each circuit leased hereunder having two terminals, there shall be a fixed monthly charge of $20.00, plus an additional monthly charge per air-line mile for the interexchange channel portion of the circuit, i.e., the portion of the circuit extending between the exchange areas in which the terminals of the circuit specified in the applicable CRO or CROs are located. In the case of circuits involving more than two terminals, the fixed monthly charge of $20.00 and the appropriate monthly charge per air-line mile shall apply to each section of the circuit. In the case of circuits extending to Canada and Mexico, the interexchange channel portion of the circuit shall be considered to terminate at the point at or near the United States boundary where the circuit interconnects with the circuit facilities of the foreign carrier. The mileage charge applicable to the interexchange channel portion of the circuit is as follows:

First 100 miles	$1.80
Next 100 miles	1.25
Next 100 miles	1.00
Next 200 miles	.90
All additional miles	.80

For purposes of this Agreement, the words "exchange area", "interexchange", and "terminal" shall have the meanings applied to them in the practices of Lessor. Air-line distance shall be measured by the method used by Lessor in its established practice.

2. Terminal Charges

In addition to the appropriate interexchange channel charges computed in accordance with paragraph 1, a terminal charge shall apply for each terminal of the circuit specified in the applicable CRO or CROs. The terminal charge covers the facilities required to terminate the interexchange channel at the Lessee's operating center or at other points specified in the CRO or CROs. The terminal charges are as follows:

	Monthly Charge	Installation Charge
Per terminal	$12.50	$10.00

If the applicable CRO or CROs specify more than one terminal in the same exchange area, the charge for each additional terminal after the first one is as follows:

	Monthly Charge	Installation Charge
Per terminal	$7.50	$10.00

3. Charge for Special Features

In addition to the appropriate interexchange channel and terminal charges computed in accordance with paragraphs 1 and 2 above, charges for special conditioning, where required, apply at each terminal specified in the applicable CRO or CROs as follows:

	Monthly Charge
C2 Conditioning	$19.00
C2S Conditioning	28.00

For other special features, the charges shall be established by Lessor.

III. Circuits Leased on a Temporary Basis

The charges for each circuit when furnished for a period of less than one month shall be as follows for each occasion of use:

For the first 24-hour period or fraction thereof	10% of the monthly charges for the interexchange channel portion of the circuit, as specified in paragraph II 1. In addition, a setting up charge of $25.00 per circuit section plus the full terminal charges specified in paragraph II 2 above, and the full charges for special features, if any, specified in paragraph II 3 above apply.
For the next consecutive 24-hour period or fraction thereof	10% of the appropriate monthly charges for the interexchange channel portion of the circuit.
For each additional consecutive 24-hour period or fraction thereof	5% of the appropriate monthly charges for the interexchange channel portion of the circuit.

The maximum charge per circuit per occasion of use shall be an amount equal to the monthly charges plus any applicable installation charges.

021

WESTERN UNION INTERNATIONAL, INC.

26 BROADWAY • NEW YORK, N. Y. 10004

ROBERT E. COHN
Vice President
Law and Administration

(212) 363-6406

July 19, 1968

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C. 20554

Re: P-C-7063

Dear Mr. Waple:

This is in response to the Commission's notice dated July 5, 1968 extending the opportunity to file comments on the application of American Telephone and Telegraph Company (AT&T) for authority to construct a coaxial cable between Green Hill, Rhode Island and Cheshire, Connecticut to provide the TAT-5 overseas cable with access to the nationwide telephone network, P-C-7063.

Western Union International, Inc. (WUI), a joint licensee of the TAT-5 cable, has been authorized to own and operate circuits within this cable. WUI and its co-licensees, including AT&T, have signed an agreement with the European co-owners of the TAT-5 cable which provides for the acquisition by the United States carriers by indefeasible right of user of circuits within landline systems in Spain and Portugal connecting with the European end of the TAT-5 cable.

In order to gain access to its authorized circuits in TAT-5, WUI will have to acquire circuits in the Green Hill/Cheshire coaxial cable system, as well as other telephone network facilities connecting back to WUI's operating offices.

Acquisition of communications facilities on a capital investment basis is the most economical means available to the international record carriers enabling them to provide service to the public at the lowest reasonable rates. Order, File No. T-C-1756, et al., January 22, 1964, FCC 64-41. This is the case with respect to connecting landline as well as transoceanic facilities. Our acquisition of transoceanic facilities on a capital investment basis has facilitated the downward trend in international rates.

A substantial portion of WUI's facility expenses involve rentals payable to AT&T for landline circuits affording us access to the many submarine cable terminal stations in the United States. We know of no carrier-supplier of such facilities other than AT&T. Moreover, the three major international record carriers are currently paying AT&T higher per circuit rentals for large quantities of facilities between common points than are other public utilities who are deemed eligible for shared Telpak rates by AT&T.

The public interest will be served by appropriate conditions in any grant of AT&T's instant application requiring it to make available to WUI on an indefeasible right of user basis landline circuits connecting WUI's operating offices with the TAT-5 cable station at Green Hill, Rhode Island. These conditions should also provide for retention of Commis[illegible] jurisdiction to ensure that the international record carriers obtain equitable and nondiscriminatory access to Green Hill via landline facilities on an indefeasible right of user basis under fair and equitable terms.

WUI respectfully requests the imposition of conditions, as specified above, upon any authorization for AT&T to construct the coaxial cable between Green Hill, Rhode Island and Cheshire, Connecticut.

Respectfully submitted,

Robert E. Conn

cc: American Telephone & Telegraph Company
ITT World Communications Inc.
RCA Communications, Inc.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

July 31, 1968

IN REPLY REFER TO:
9520

Western Union International, Inc.
26 Broadway
New York, New York 10004

Attention: Robert E. Conn, Vice President
Law and Administration

Gentlemen:

There is enclosed a copy of a letter to the American Telephone and Telegraph Company requesting the views of that company with respect to matters raised by your letter of July 19, 1968 asking that any grant of the captioned application be conditioned in certain respects.

Will you please submit in detail the necessary factual information to show the portion of WUI total facilities expenses which involve rental payments to AT&T for landline circuits affording WUI access to cable terminal and satellite earth stations in the United States, as well as factual information as to reduction in facility expenses WUI might expect should it be authorized to purchase indefeasible right of user in landline circuits.

Will you also submit factual data to support your allegation that the acquisition of landline facilities, including diversity circuits, on a capital investment basis is the most economic means available to the international record carriers, and the estimated effect the acquisition of circuits on such basis will have on WUI's rates to the public.

Sincerely yours,

A. C. Roseman, Chief
International & Satellite Communications Division
for Chief, Common Carrier Bureau

cc: ITT World Communications Inc.
American Telephone & Telegraph Co.
RCA Communications, Inc.

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[illegible]

WESTERN UNION INTERNATIONAL, INC.

26 BROADWAY • NEW YORK, N. Y. 10004

(212) 363-6406

ROBERT E. CONN
Vice President
Law and Administration

August 1, 1968

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Waple:

Re: P-C-7063

There is now pending before the Commission an application of American Telephone & Telegraph Company (AT&T) for authority to construct a coaxial cable between Green Hill, Rhode Island, and Cheshire, Connecticut to provide the TAT-5 overseas cable with access to the nationwide telephone network. There is also pending before the Commission a letter from Western Union International, Inc. (WUI) dated July 19, 1968, requesting the imposition of certain conditions upon any authorization to AT&T. These conditions related to the terms under which facilities in the proposed coaxial cable would be made available to WUI for its overseas services. WUI is not aware that any opposition has been filed to WUI's letter of July 19, 1968.

AT&T has furnished us with a copy of its telegram to the Commission of July 31, 1968, requesting "immediate authority to proceed with portion of Green Hill-Cheshire cable".

WUI respectfully requests that there be no such grant of "immediate authority" unless such grant contains the conditions requested by WUI in its letter of July 19, 1968.

Very truly yours,

/s/Robert E. Conn

cc:American Telephone & Telegraph Company - J. C. Barclay, Asst. V-P
ITT World Communications Inc.- Derrick W. Samuelson,V-P & Gen. Co
RCA Communications, Inc. - Eugene Murphy, Esq. - General Attorne

bcc:Roseman, Clinkscales, Starns

August 1, 1968

9520

American Telephone and Telegraph Company
32 Avenue of the Americas
New York, New York 10013

Attention: Mr. J. R. Roe
Assistant Vice President

Gentlemen:

Reference is made to the letter of July 19, 1968, from Western Union International, Inc. to the Commission, a copy of which was furnished to you, requesting that the Commission condition any grant of AT&T's application assigned File No. P-C-7063, to require AT&T to make available to WUI on an indefeasible right of user basis landline circuits connecting WUI's operating office with the TAT-5 cable station at Green Hill, Rhode Island, as well as the further condition for retention of jurisdiction to ensure that the international record carriers obtain equitable and nondiscriminatory access to Green Hill via landline facilities on an indefeasible right of user basis under fair and equitable terms.

The Commission would like for you to submit your comments on the foregoing request by September 1, 1968, including discussion of the matters set forth in our letter to WUI of July 31, 1968, a copy of which is enclosed.

Sincerely yours,

A.C. [illegible]
Chief, International & Satellite
Communications Division
for Chief, Common Carrier Bureau

cc: ITT World Communications Inc.
RCA Communications, Inc.
Western Union International, Inc.

026

RCA COMMUNICATIONS, INC.
A GLOBAL SERVICE OF RADIO CORPORATION OF AMERICA

EUGENE F. MURPHY
SENIOR COUNSEL

CC: FAG
JSG
JGH
KTR
TFM

August 2, 1968

FYI
KEC
8/5/68

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Waple:

This is in response to the Commission's Notice of July 5, 1968 inviting comments on the application of American Telephone and Telegraph Company ("AT&T"), for authorization to supplement existing facilities between Green Hill, Rhode Island and Cheshire, Connecticut in order to interconnect the proposed TAT-5 overseas cable with the nationwide telephone network (File No. P-C-7063).

As a joint licensee of the TAT-5 cable and a common carrier authorized to own and operate circuits in that cable, RCA Communications, Inc. ("RCA") foresees a need to utilize circuits in the proposed Green Hill/Cheshire coaxial cable, and in other portions of AT&T's interstate telephone system for interconnection between the TAT-5 cable head at Green Hill, Rhode Island and RCA's operating offices in the gateway cities. RCA has a duty, in the public interest, to obtain the facilities necessary to render its service to the public at the lowest reasonable cost.

Normally, the most economical means to acquire such necessary connecting facilities is by ownership. In its Second Report and Order, Ownership and Operation of Earth Stations, 5 F.C.C. 2d 812, 818 (1966), the Commission recognized the advantages to authorized carriers of owning interests in new facilities:

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> "We also understand their evident desire to maximize investment as a basis for the opportunity to earn a fair return on capital devoted to public service . . . . We find that the most logical and equitable formula is one under which ownership is reasonably related to use. Any major departure from this principle would, in essence, mean that a carrier, ready, willing and able to pay for facilities which it actually requires to handle traffic would be required to lease them from a second carrier. The sole function of the second carrier would be that of the investor in facilities on which such second carrier would realize a return at the expense of the first-carrier user."

The Commission's decision of May 22, 1968 authorizing the construction of TAT-5 (File No. P-C-7022), follows the precedent established in its TAT-4 decision by allocating circuits to AT&T and the major international record carriers on the basis of ownership interests consonant with use. Unless international record carriers owning interests in TAT-5 are also permitted to acquire by ownership necessary connecting circuits in the proposed Green Hill/Cheshire cable system, their only alternative may be to lease such connecting circuits from AT&T. The undesirable situation foreseen by the Commission in the portion of its Second Report and Order quoted above may then come to pass, with AT&T acting as investor in facilities on which it will realize a return at the expense of other United States carriers-users of such facilities.

Accordingly, RCA respectfully requests that any grant of authority for construction of the facilities covered by AT&T's application herein (File No. P-C-7063) be appropriately conditioned so as to require AT&T to make available on an ownership basis to RCA and other international record carriers the necessary connecting circuits they may require in such facilities. A copy of this letter is being sent to counsel for AT&T, ITT World Communications Inc.., and Western Union International, Inc.

Respectfully submitted,

Eugene F. Murphy

s/Eugene F. Murphy

028 -

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

LONG LINES DEPARTMENT

32 AVENUE OF THE AMERICAS

NEW YORK, N. Y. 10013

GEORGE E. ASHLEY
GENERAL ATTOR

AREA CODE 212
393-6708

August 28, 1968

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Waple:

In Re: Application File No. P-C-7063

This is in response to Mr. Roseman's letters for the Chief, Common Carrier Bureau requesting our comments on the letter of July 19, 1968, of Western Union International, Inc. (WUI) to the Commission and similar letters to the Commission from ITT World Communications, Inc. (ITT) and RCA Communications, Inc. (RCA).

By these letters the international record carriers request that the grant of this Company's (AT&T's) application to construct a cable between Green Hill, Rhode Island, and Cheshire, Connecticut, be conditioned to require the grant to them of indefeasible right of use or ownership interests in AT&T's domestic facilities. They seem to be seeking interests in not only the facilities for which authorization is sought, but other facilities as well.

These requests are unprecedented. AT&T strongly objects to the imposition of conditions of the type proposed, and does not believe such conditions can lawfully be imposed upon it without its consent. The carriers make no showing that the public convenience and necessity require the conditioning of AT&T's authorization for the Green Hill-Cheshire cable as they propose. No such showing could be made since the public convenience and necessity do not require such drastic action. Quite the contrary, they require that the authorization not be so conditioned.

It is important to recognize at the very outset that there is a fundamental difference between the problems involved with indefeasible rights of use or divided ownership in particular facilities used in providing overseas service, such as submarine cables or satellite earth stations, and those created by the introduction of such concepts into the complex and ever-changing domestic network.

The circuits requested by the carriers would be a part of AT&T's domestic network. While the forthcoming construction of the TAT-5 cable is the reason for the selection of the specific route of the proposed Green Hill-Cheshire cable, and the reason for the particular timing of its construction, the proposed facility is by no means to be used exclusively or even predominantly as a connection for TAT-5. The Green Hill-Cheshire cable will have an ultimate capacity of approximately 7,200 circuits. If later converted to an L-5 type, such capacity would increase to about 18,000 circuits. In time its use in connection with TAT-5 will be only a very small part of its total use. It will provide highly desirable diversification for communications into the rapidly growing Long Island area and thence either around or into New York City as may be desirable. The cable will be used similarly for the Cape Cod area. Furthermore, the carriers' requests seem to go beyond the Green Hill-Cheshire cable. They request the indefeasible right of use or ownership of circuits in all facilities necessary to reach their operating offices. These would be facilities already constructed or which may be constructed in the future to serve all types of communications needs. If successful in this attempt, the carriers would undoubtedly use this case as a precedent for seeking similar rights with respect to other facilities across the United States. Domestic carriers may be expected to claim the same rights. The cumulative effect of all such grants could seriously affect AT&T's ability to manage its domestic network with maximum efficiency, and adversely affect its domestic service.

Until now, the indefeasible right of use concept or divided ownership has been applied only in the field of ocean cables and other overseas systems. The joint ownership of ground stations, which was the subject of careful statutory consideration and authorization, is analogous to similar rights in cable stations which the carriers already have. The practice has been made to work despite some frictions and increased administrative complications. However, indefeasible right of use or divided ownership in a single unchanging transmission facility such as an ocean cable is much simpler to administer than would be the case in the much more complicated domestic network. Thus, the Commission's orders with respect to earth stations and submarine cables relied upon by the carriers are not apt precedents for what is sought here.

The excellence of telephone service in the United States is due in large measure to the considerable freedom the telephone companies have in planning, designing, constructing, maintaining, operating and managing the network. The efficient management of this network requires flexibility in making changes, rearrangements, retirements and innovations as service requirements and communications technology develop. Lack of such flexibility would result in poorer and, in the long run, more costly service. Year by year the use made of the various sections of plant changes. An indefeasible right in any particular

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facility may become inappropriate and uneconomic because the plant should no longer optimally be used for the purpose for which the indefeasible right was originally acquired. In other words, situations could develop where changes should be made for the benefit of the telephone companies and their subscribers which might not be similarly beneficial to the other carriers.

Let us cite typical examples: A radio relay system may be built in one period to provide channels between New York and Chicago, also providing service to various cities en route such as Philadelphia, Pittsburgh, Cleveland and Toledo. As growth requires additional facilities it may become economical to construct a new coaxial cable between New York and Chicago, to remove all New York-Chicago through channels from the radio relay route, and to reuse the released capacity of the radio route for growth between the intermediate cities which would require terminating them in such cities.

If other carriers had interests in the original New York-Chicago channels it would be impossible to make these changes without their consents. If they did consent, it would be necessary for them to sell their interests in the radio relay system at some depreciated price to be determined, and to buy interests in the new cable. Alternatively, if they insisted on staying on the radio relay route, they would need to pay their shares of the multiplexing and connecting equipment at each intermediate point required to connect their circuits through at each point.

Similar rearrangements of usage of facilities are frequently made to provide video channels. Economic provision of a new video channel by moving facilities used for other communications to another transmission medium or route could be impeded by refusal of other carriers to relinquish their interests in the original radio relay channel.

Also, technical advances make it desirable from time to time to change various elements in transmission systems to obtain improvements in quality, reliability or capacity. As we look to the future, there is a strong probability that changes in coaxial cable repeaters will be made not only to increase the capacity of the cables (i.e., change from an L-4 to an L-5 system) but to change the mode of transmission (i.e., from analog to digital). Other carriers satisfied with their existing rights might object to making the capital expenditures and the changes in their operating practices which would be required.

Again, in the course of progress it may become desirable for purposes of efficiency and economy to retire certain facilities because of obsolescence or uneconomic further use. Such economic moves might not be possible without the consent of other carriers having interests.

Furthermore, the basic transmission facility is not the only item of plant which would be subject to indefeasible right of use or ownership if the demand of the carriers for capital investment instead of rental of facilities is carried to its logical conclusion. To be complete, it would be necessary to break out, by individual accounts, appropriate portions of the investment in land and buildings, multiplex terminals, connecting devices, power plants, test equipments, and other facilities. The arrangement and usage of these types of equipment are constantly changing from month to month. Certain facilities such as buildings at key junction or terminal points are used in common for literally thousands upon thousands of circuits on many different routes. The grant of interests to others therein would require continual changes in proportionate investment and resultant purchases and sales. The necessity for obtaining agreement of other carriers for all such changes and the volume of paper work entailed would be a continuing drag on the formulation of construction plans and the timely provision of new plant.

Because of the problems outlined above, carving out little pieces of plant to be dedicated to the use of particular carriers, with resultant loss of efficiency and economy in the provision and administration of facilities, could only result in higher overall costs as compared with the existing arrangements whereby the Bell Companies furnish facilities to other carriers on a rental basis. The additional costs would, of course, ultimately be borne by the general body of communications users.

Grant of the requests would not only have an adverse effect on, and increase the cost of, Bell System service, but would very likely have an adverse effect on the service and costs of the international record carriers themselves. When they contract with AT&T to transmit their communications from the cable terminals to their operating offices they receive all the assurance of diversity, flexibility, and continuity of service that the entire network can provide. Conversely, when they make a capital investment, either for ownership or indefeasible right of use, they secure the use of only a specific physical facility with all the reduction in flexibility, protection, and assurance of continuity that that entails. To the extent that they might be able to fall back upon the telephone companies to maintain continuity of service, they would incur additional expense.

In the long run domestic facilities obtained by the international record carriers by capital investment would be likely to result in higher costs to them than would be the case with rentals because of the inflexibility of the plant so obtained. For example, such a carrier might obtain circuits between Green Hill and New York City. Later it may develop that the need for these circuits is to terminate in Washington, Omaha, Colorado Springs and other points throughout the United States, with a customer requirement that they not pass through

New York City. If obtained on a rental basis, the arrangements for the original Green Hill-New York facilities could be terminated and replaced by circuits on desirable routes to the other places. If the record carrier, however, had ownership or indefeasible right of use in the original facilities, it would be encumbered with plant for which it had no need until it could find some other use for it or arrange for a repurchase by the Telephone Company.

We know of no provision of the Communications Act, or of any other law, that requires one carrier to provide another carrier with facilities needed by the latter for the rendition of its service to its own customers. Railroads for years have been required to permit the rolling stock of other railroads to traverse their roadways, but they have not been required to share ownership in their own systems with such other roads. The Commission is given the power (Communications Act of 1934 as amended, Sec. 201), as is also the Interstate Commerce Commission, to order through services, but this has not entailed rearrangements of ownership. All these arrangements are designed to avoid economic waste and yet provide needed public service, but not to favor one carrier's private interest at the expense of another. The power of the Commission to condition authorizations which it grants is not an independent and unlimited power but one which must be used in consonance with the regulatory responsibilities delegated to it by the Congress.

For many years AT&T has voluntarily entered into contracts with the international record carriers by which it has made circuits available to them in its landline facilities in the United States. The rentals for such circuits are comparable to those charged The Western Union Telegraph Company for circuits under a long standing reciprocal agreement, and are below the rates for comparable services offered to the public under tariffs. In this connection, WUI's reference to shared Telpaks is somewhat misleading. The public utilities to which it refers are customers under the general Telpak offering, they use the service ordered from the Bell System for their own communications, and their use characteristics, including sharing, are a part of the overall basis for Telpak rates. None of them take Telpak service from the Bell System and then resell to others as common carriers. AT&T's rentals to the carriers are not a part of the Telpak offering, as those to Western Union are not. Those rentals are based on the costs of the facilities rented.

The international record carriers have contended that acquisition of landline facilities on a capital investment basis would be the "most economical means" for them, and that this would permit them to provide service at lower rates. You requested further exposition of their views on these points, and also requested us to comment. We confess that we are at a loss to understand this argument and will, of necessity, have to await their further views before commenting at any length. Suffice it to say now, however, that the true economic cost of the facilities, i.e. the capital investment required, is the same whether the carriers reimburse AT&T for a portion of the capital expended or whether AT&T provides it all. The record carriers seek merely to substitute themselves for AT&T as investors. Where there is no saving in economic resources, there can in the final analysis be no lowering of rates to the public as a whole, whether the international record carriers acquire their facilities by rentals which correctly reflect the proportionate costs to the telephone companies of the facilities which they use, or whether they make the investment directly and have to recover their carrying charges. And, as we have described in some detail above, there are real economic and service penalties that must be paid in reduced efficiency and flexibility in the management of the domestic network, as well as increased administrative costs, if their requests are granted. Similar penalties would also be incurred by the record carriers as also discussed above.

Finally, a brief comment should be made about the reliance of the record carriers on the Commission's orders in the TAT-4 case and in the matter of the ownership of earth stations. We have already set forth the significant factual differences between these relatively separate, readily identifiable facilities and the complex domestic network. In addition, there are other reasons which make the alleged precedents of little or no value as such. In the case of earth stations, there is a declared legislative policy of having the full service carriers as well as Comsat eligible for ownership, including joint ownership (Communications Satellite Act of 1962, Sec. 201(c)(7)). With respect to the TAT-4 authorizations, the reasons which led the Commission to insert conditions relative to indefeasible right of use or ownership in its grants, and which led AT&T to offer to accept such conditions, do not exist with respect to the present project. For example, at the time of its orders in the TAT-4 controversy, the Commission was concerned with the problem of how to place the record carriers in a position to compete with AT&T for the international private line data business, which it was felt was supplanting their traditional sources of revenue. At that time, all alternate voice-data private line circuits were the business of AT&T; now, AT&T has none of that business except for a diminishing number of "grandfather" circuits.

Also, and additional point that should be brought out is that the broadband transoceanic cables were supplanting with a new and more modern technology facilities which the international record carriers had traditionally been providing for themselves. Such is not the case with terrestrial facilities from cable station (or satellite earth station as the case might be) to their operating centers. While they may have had the legal right to construct their own facilities, only in a few instances have they done so.

They have traditionally relied on the domestic landline carriers to provide for their needs in this respect. Thus, what they are actually seeking now is to supplant AT&T from a function which it has long performed, and one which they have not.

For all the foregoing reasons, AT&T strongly opposes the requests of the international record carriers and respectfully requests the expeditious grant of its application so that the proposed cable between Cheshire, Connecticut, and Green Hill, Rhode Island, can be completed by the time the TAT-5 cable is ready for service.

Copies of this letter are being sent to Western Union International, Inc., ITT World Communications, Inc. and RCA Communications, Inc.

Yours very truly,

COPY

WESTERN UNION INTERNATIONAL, INC.
26 Broadway, New York, N.Y. 10004

December 2, 1968

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: File No. P-C-7063

Dear Mr. Waple:

This refers to the pending application of American Telephone and Telegraph Company (AT&T) for authority to construct a coaxial cable between Green Hill, Rhode Island and Cheshire, Connecticut to provide the TAT-5 overseas cable with access to the nationwide telephone network.

By letter dated July 19, 1968, Western Union International, Inc. (WUI) requested that the Commission insert a condition in any authorization to AT&T requiring it to make available to WUI, on an indefeasible right of user basis, landline circuits connecting WUI's operating offices with the TAT-5 cable station at Green Hill, Rhode Island.

On August 28, 1968, AT&T filed an opposition to our request. Subsequently, the international record carriers and AT&T conducted discussions regarding the terms and conditions under which landline facilities would be furnished to the record carriers. These discussions have now been concluded and AT&T has agreed to revise the basis of charging for intercity facilities and to review the basis of charging for intracity facilities.

Accordingly, WUI requests that its letter of July 19, 1968 be retired to the Commission's files without prejudice to our right to reassert the position therein taken in any future proceedings. WUI has no objection to a grant of the pending AT&T application.

The instant request should not be construed as indicating any concession on our part as to the validity of the arguments presented by AT&T in its letter of August 28, 1968 in opposition to the application of the indefeasible right of user concept to landline facilities used by WUI to transmit its international communications. To the contrary, WUI believes that the alleged problems presented by AT&T regarding facilities located wholly within the United States are more fanciful than real. Joint ownership concepts have been applied successfully among telecommunications entities located in different countries and pertaining to facilities located or to be located both in the United States and abroad, as well as under international waters and in outer space. We predict that these concepts will spread with the resulting benefit of improved efficient and economical global communications.

The Commission in the public interest has extended the indefeasible right of user concept to landline facilities in Puerto Rico. (Decision of October 30, 1968 in re applications of All America Cables & Radio, Inc., Docket No. 18072, et al.) Logic and equity will inevitably require that the United States international carriers acquire on an IRU or ownership basis, connecting landline facilities and terrestrial installations within the United States used to carry international communications between operating centers of the international carriers and between such centers and satellite earth stations and submarine cable stations.

Very truly yours,

/s/Robert E. Conn

cc:American Telephone and Telegraph Company
ITT World Communications Inc.
RCA Global Communications, Inc.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

June 6, 1974

IN REPLY REFER TO:
9510

American Telephone & Telegraph Company
195 Broadway
New York, New York 10007

Attention: T. W. Scandlyn
Assistant Vice President

Gentlemen:

Presently, certain facilities which AT&T furnishes to international record carriers (IRC's) between the IRC's operating offices and their overseas facilities (earth stations and cable heads) and between and among their operating offices (e.g., New York and San Francisco gateways) are provided under contract rather than pursuant to tariffs. Similar facilities supplied to domestic satellite common carriers, however, appear to be tariffed (see, e.g., AT&T Tariff F.C.C. Nos. 265 and 266, Pacific Telephone and Telegraph Co. Tariff F.C.C. Nos. 123 and 124). Further, such facilities provided the IRC's within a single local distribution area have been recently made subject to tariff (AT&T Tariff F.C.C. No. 1, filed May 3, 1974).

In Applications of AT&T For Authorization to Construct and Operate Five Earth Stations, 42 F.C.C. 2d 654, 659-660 (1973), the Commission stated "One of the primary purposes of tariffs is to assure that carriers will provide facilities and services without discrimination.... We see no reason why tariffs should not be filed by the Bell System to cover facilities supplied to satellite licensees. The statutory requirement under our Act for filing of tariffs is based upon the national public interest in securing uniformity of treatment to all, to suppress unjust discrimination and undue preferences, and to prevent special and secret agreements, in respect to interstate wire and radio communications, and to that end to require that rates applicable thereto be established in a manner calculated to give them publicity, to make them inflexible while in force, and to cause them to be unalterable except in a manner prescribed by statute."

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TARIFF DEPARTMENT

-038

In the recent Bell System Tariff Offerings decision in Docket 19896, FCC 74-457 (April 23, 1974), the Commission ordered AT&T to provide certain interconnection facilities to specialized common carriers and to file appropriate tariffs. Filings were made with the Commission May 3, 1974.

We therefore expect AT&T to file, within twenty days of the date of this letter, pursuant to Section 203 of the Communications Act and Part 61 of the Rules, appropriate tariffs upon not less than sixty days' notice, to reflect the offering of facilities referred to in paragraph one above.

Sincerely yours,

Walter Hinchman

Walter R. Hinchman
Chief, Common Carrier Bureau

cc: International Record Carriers

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
FEDERAL COMMUNICATIONS COMMISSION

Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Attention: P. H. Sach
Asst. Vice Pres., Tariffs

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

ROBERT E. CONN
Executive Vice President

Telephone (212) 363-6403

June 19, 1974

Mr. Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Hinchman:

There has just come to our attention a copy of your letter, dated June 6, 1974, to American Telephone and Telegraph Company (AT&T) relating to landline circuits furnished by it to the international record carriers connecting their gateway offices with the various international cable terminals and satellite earth stations, and also connecting their respective gateway offices. Your letter indicates that you "expect AT&T to file within twenty days...appropriate tariffs" covering the offering of these facilities.

We respectfully request that this apparent deadline imposed upon AT&T be deferred indefinitely, and that an industry meeting be convened by the Bureau to review this matter in depth. Otherwise, unnecessary burdens will be imposed upon both the Bureau and the carriers involving multitudinous petitions and the usual inevitable flow of paper. Also, such a meeting should facilitate an exchange of information, and relevant--albeit unique--facts relating to the international industry can be brought to the Bureau's attention.

The matters that should be reviewed at the proposed meeting, without limitation, would include:

1. The relevant carrier-to-carrier facility contracts. The AT&T/WUI contract is dated May 9, 1968, and is on file with the Commission.

2. The background underlying the formulation of these contracts.

3. The effects of abrogation of these contracts upon the U.S. communications industry's relationship with the foreign telecommunications entities. Not only does the aforementioned AT&T/WUI contract relate to facilities provided to such foreign entities (¶3(d) for example), but also any abrogation of said contract might impact upon the foreign entities through the several TAT cable construction agreements. For example, see TAT-6 agreement, dated May 2, 1973, ¶5(a)(b).

4. Whether the long-standing submarine cable and satellite earth station consortia of the international carriers (including AT&T) set this industry apart from the domestic telecommunications industry, and warrant continuation of the carrier-to-carrier facility contracts. After all, the connecting landline circuits are merely ancillary to the international cable and satellite paths.

5. The effect upon this subject matter of prior relevant Commission decisions in Docket No. 19896 relating to the AT&T/Western Union Telegraph facility contracts. See Commission decisions of April 23, 1974 and December 13, 1973. In the latter decision at paragraph 14, the Commission ruled: "Accordingly, it does not appear that the tariff and contract services are necessarily mutually exclusive or that they may not both co-exist."

6. The detrimental effects upon the public interest likely to result from any abrogation of the facility contracts between AT&T and the international record carriers.

We trust that you will agree with our request to review this matter at a Bureau/industry meeting, rather than through a flood of advocacy pleadings which will unnecessarily burden both the Bureau and the industry.

Very truly yours,

Robert E. Conn

CC: American Telephone and Telegraph Company
ITT World Communications Inc.
RCA Global Communications, Inc.

BCC: EAG
JGM
RPR
DHT
PHS
EB

ITT World Communications Inc.

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-3300

June 25, 1974

Mr. Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: American Telephone and Telegraph
Company - Reference No. 9510

Dear Mr. Hinchman:

Reference is made to your letter to American Telephone and Telegraph Company (AT&T) dated June 6, 1974 requesting that AT&T tariff rates for facilities provided by AT&T to the international record carriers between their operating offices and their overseas facilities (earth stations and cable heads), and between their gateway offices.

ITT World Communications Inc. (ITT Worldcom) believes that requiring AT&T to file tariffs covering the captioned facilities could be seriously prejudicial to ITT Worldcom.

In its recent decision in Docket No. 19896 (FCC 74-457) the Commission held that existing contracts between Bell System companies and The Western Union Telegraph Company (WUT) could not be modified by unilateral tariffs filed by the Bell System Companies stating:

> "We also hold that Bell cannot supersede, modify or terminate its contracts with Western Union merely by filing tariffs or taking other unilateral action. In the light of court decisions interpreting comparable legislation, it appears that, except as

> expressly modified by statute, Bell's contractual obligations with Western Union are governed by common law and can be changed or modified only in accordance with the procedures set forth in the contracts or the Communications Act. In interpreting the Natural Gas Act, which is similar in several significant respects to the Communications Act, the Supreme Court held that contracts for services could not be abrogated by the filing of new schedules of charges." (FCC 74-457, pp. 30-31)

AT&T has filed a Petition to Review the Commission's said decision in Docket No. 19896 in the United States Court of Appeals for the Third Circuit (Docket No. 74-1386).

Prior to the Commission's decision in Docket No. 19896 the Commission had rejected a number of pleadings by the international record carriers opposing implementation of Tariff F.C.C. No. 37 filed by the New York Telephone Company (N.Y. Telco), and distinguished between "alleged informal oral contracts" between N.Y. Telco and the international record carriers, which had not been filed with this Commission, and the contracts between WUT and N.Y. Telco (FCC 74-294, p. 3). ITT Worldcom has filed a Petition for Review of this order in the United States Court of Appeals for the Second Circuit (Docket No. 74-1721).

ITT Worldcom is seriously concerned that if AT&T complies with the Commission's letter of June 6, 1974, that the tariff filed by AT&T may contain terms and conditions less favorable to ITT Worldcom than those presently provided by its contract. In that event the identical question presented to the Commission in Docket No. 19896--whether the tariff would supersede ITT Worldcom's written contract--would again be at issue.

It would certainly be inconsistent for the Commission to argue in the United States Court of Appeals for the Third Circuit that Bell System companies cannot abrogate written contracts with WUT by filing a unilateral tariff and concurrently contend in a case where, it is ITT Worldcom's understanding, AT&T does not wish to abrogate its contract with ITT Worldcom, that AT&T must file a tariff which may have just this effect. ITT Worldcom believes there is no valid legal or policy reason upon which the Commission can distinguish between a written contract between ITT Worldcom and AT&T which has been filed with the Commission, and the written contracts between Bell System companies and WUT, which were at issue in Docket No. 19896.

Moreover if AT&T filed a tariff covering circuits, such as the circuits between ITT Worldcom's San Francisco and New York offices, which provided rates and other terms and conditions less favorable than those being accorded to WUT pursuant to contract (which would presumably continue in force under the Commission's decision in Docket No. 19896) a clear case of discrimination, in violation of Sections 202(a) and 406 of the Communications Act of 1934, as amended, would be presented. ITT Worldcom would be unwilling to passively accept discrimination of this type and would, as it did in connection with discrimination arising out of N.Y. Telco's Tariff F.C.C. No. 37, take appropriate action.

In any event ITT Worldcom requests that no further action be taken with respect to this matter until the United States Court of Appeals for the Second Circuit has acted on ITT Worldcom's pending Petition for Review and the United States Court of Appeals for the Third Circuit has acted on the Petition for Review of the

Commission's decision in Docket No. 19896. Certainly the public interest cannot be seriously prejudiced by continuation, pedente lite, of these long-standing carrier to carrier contracts which are clearly contemplated by Section 205(c) of the Communications Act of 1934, as amended.

Very truly yours,

Joseph J. Jacobs
Vice President and
General Attorney

JJJ/kes

cc: Messrs. Roseman, Fishman (FCC)
Messrs. DeRosa (RCA), Conn (WUI), Scandlyn (AT&T)

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RCA

rl J. Cangelosi
[illegible]
[illegible] D.C

Mr. Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Hinchman: June 25, 1974

On June 19, 1974 Western Union International, Inc. (WUI) requested that you indefinitely postpone the deadline by which the American Telephone and Telegraph Company (AT&T) was to file tariffs covering the landline circuits now furnished to the international record carriers.

RCA Global Communications, Inc. supports the WUI position and believes that the Commission should not take precipitous action without first considering the views of all parties on the question of whether there is any need to change the traditional method under which the landline circuits have been secured. As the Commission is well aware, there is no statutory requirement that the provision of facilities by one common carrier to another be pursuant to tariff. Rather, the usual and accepted method has been that the provision of facilities among carriers has been governed by intercarrier arrangements. The only exception to this practice has been in the domestic satellite and specialized common carrier fields where the Commission specifically found that the use of a tariff would better allow it to insure that these carriers had access, on non-discriminatory terms and conditions, to vital facilities obtainable only from AT&T. We do not believe that this consideration applies in the present situation since AT&T and the international record carriers have been able, for the most part, to satisfactorily deal with one another on an intercarrier contract basis.

Therefore, we join WUI in calling for a Commission/industry meeting before action is taken which may not be needed or which will not serve to further any interest.

Sincerely,

Carl J. Cangelosi

cc: American Telephone and Telegraph Company
ITT World Communications Inc.
Western Union International, Inc.

AT&T

T. W. Scandlyn
Assistant Vice President

American Telephone and
Telegraph Company
195 Broadway
New York, N.Y. 10007
Phone (212) 393-3342

June 26, 1974

Mr. Walter R. Hinchman, Chief
Common Carrier Bureau
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Hinchman:

This letter is in reply to your letter dated June 6, 1974, reference number 9510, stating your expectation that American Telephone and Telegraph Company ("AT&T") will file tariffs offering certain facilities to the International Record Carriers ("IRCs"). The facilities in question are currently furnished by AT&T to each of the IRCs under general lease agreements referred to in paragraph one of your letter. These lease agreements, which had their inception in 1959 with the advent of new high capacity submarine cables, offer facilities between specific IRC gateway cities, and between the IRC's operating centers in those cities and overseas cable terminals or earth stations accessing international satellite facilities.

At this time, we respectfully decline your suggestion to offer, under tariff, these facilities which are now offered under general lease agreements. Indeed, except for your letter we are unaware of any other suggestions that we do so, nor have we pursued any discussions with the IRCs which would envision providing these facilities under tariff. We do not believe that either the Commission's September 12, 1973, Domestic Satellite Authorization or the Decision in Docket No. 19896 requires that such facilities be tariffed. As you know, the legal effect of tariff filings on carrier-to-carrier contracts is one of the issues being considered in the appeal from the Commission's Decision in Docket No. 19896 (FCC 74-457), released April 23, 1974, presently pending in the United States Court of Appeals for the Third Circuit (Case No. 74-1386). To tariff these facilities at this time would be premature.

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In light of the above and the longstanding and mutually satisfactory arrangements between AT&T and each of the IRCs, it does not appear desirable to supersede these contracts by unilaterally initiating the tariff filings contemplated by your letter. We would be pleased to discuss this matter with you further, if you so desire.

Very truly yours,

Assistant Vice President

CC: International Record Carriers

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FCC 75-450

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMERICAN TELEPHONE & TELEGRAPH CO. ET AL.
Offer of Facilities for Use by Other Common Carriers
} Docket No. 20099

MEMORANDUM OPINION AND ORDER

(Adopted April 23, 1975; Released May 7, 1975)

BY THE COMMISSION:

1. On March 13, 1975, a Joint Motion was filed in the above-captioned proceeding by American Telephone and Telegraph Company and the Associated Bell System Companies, American Satellite Corporation, Data Transmission Company, ITT World Communications, Inc., MCI Telecommunications Corporation, Interdata Communications, Inc., MCI-New York West, Inc., Microwave Communications, Inc., N-Triple-C, Inc., RCA Global Communications, Inc., Southern Pacific Communications Company, Transportation Microwave Corporation, Western Tele-Communications, Inc., The Western Union Telegraph Company, Western Union International, Inc., and the Trial Staff, Common Carrier Bureau, Federal Communications Commission. These parties have "requested that, "upon review of the . . . Settlement Agreement [attached to the Joint Motion] the Commission adopt an appropriate order which would:

> (1) accept the settlement, as reflected in the Settlement Agreement, as a disposition without prejudice of F.C.C. Docket No. 20099; and
>
> (2) grant appropriate authorizations, including waivers of applicable sections of Part 61 of the Commission's Rules, to implement the Settlement Agreement, including the appendices attached thereto; and
>
> (3) terminate without prejudice the proceedings in F.C.C. Docket No. 20099."

2. Comments on the Joint Motion and Settlement Agreement were jointly filed by the National Association of Radiotelephone Systems, Inc., Tel-Illinois, Inc., Tel-Missouri, Inc. and DPRS, Inc. and by the Independent Data Communications Manufacturers Association, Inc. An opposition was filed by James M. and Miriam G. Carpenter d/b/a Carpenter Radio Company.

HISTORICAL BACKGROUND

3. On November 12, 1973, the Bell System companies filed tariffs with us offering two types of access facilities to Domestic Satellite

carriers: *entrance* facilities to be furnished under AT&T Tariff F.C.C. No. 265 and Pacific Telephone and Telegraph Company (PT&T) Tariff F.C.C. No. 123 and *intercity* interexchange channel facilities to be furnished under AT&T Tariff No. 266 and PT&T Tariff F.C.C. No. 124. Additionally, 14 Associated Bell System companies filed separate tariffs with us offering to provide *local distribution* facilities not only to Domestic Satellite carriers but to other carriers as well. All of the aforementioned tariffs were identified in our Public Notice of November 19, 1973. On or before December 19, 1973, petitions to suspend and investigate the tariffs were submitted by: MCI Telecommunications Corporation, Microwave Communications, Inc., MCI-New York West, Inc., Interdata Communications, Inc., and MCI St. Louis-Texas, Inc. (collectively MCI); The Western Union Telegraph Company (WU); the American Satellite Corporation (ASC); Data Transmission Company (Datran) and Southern Pacific Communications Company (SPCC). RCA Global Communications, Inc. filed a letter of concern as to several tariff provisions on December 18, 1973. The petitions asked us to suspend the effectiveness of these tariffs and to set them for hearing on the questions of lawfulness raised by the petitioners. In separate pleadings, MCI, WU, ASC, and CML Satellite Corporation asked us to reject the tariffs in question without further proceedings. The Bell System submitted its reply pleadings on January 3, 1974, in which it opposed all petitions to suspend or to reject.

4. By Memorandum Opinion and Order,[1] we denied the petitions to the extent that they requested suspension or rejection at that time. Thus our action allowed all of the tariffs to become effective, as published, on January 11, 1974, except for the New York Telephone Company tariff (F.C.C. No. 37) which was published to become effective February 24, 1974. Subsequent to our January 11, 1974 Order, we received further petitions to suspend and reject New York Telephone Company's Tariff F.C.C. No. 37, filed by ITT World Communications Inc. and Western Union International, Inc. By Memorandum Opinion and Order[2] we denied these new petitions to the extent that they again requested suspension or rejection at that time. In both of these Orders, we stated that we would defer further action on the tariff filings until further proceedings in Docket No. 19896, and that to the extent the questions raised by the petitions are not encompassed in the issues to be resolved in Docket No. 19896, a separate investigation and hearing would be instituted in due course.

5. The Commission instituted Docket No. 19896 in response to concerns that AT&T and the Associated Bell System companies were not implementing various policy decisions which we had previously adopted in the MCI,[3] Specialized Common Carrier Services[4] and DOMSAT[5] proceedings. The principal issue in Docket No. 19896

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[1] *Bell System Tariffs re Entrance, Intercity and Local Distribution Facilities*, 46 F.C.C. 2d 885 (1974).

[2] *New York Telephone Company Tariff F.C.C. No. 37*, 45 F.C.C. 2d 365 (1974), *recon. denied*, 46 F.C.C. 2d 132 (1974), *appeal docketed sub nom., ITT World Communications Inc. v. F.C.C.*, No. 74-1721 2nd Cir.

[3] *Microwave Communications, Inc.*, 18 F.C.C. 2d 953 (1969), *recon. denied*, 21 F.C.C. 2d 190 (1970).

[4] *Specialized Common Carrier Services*, 29 F.C.C. 2d 870 (1971), *aff'd sub nom., Washington Utilities and Transportation Commission v. F.C.C.*, —— F. 2d —— (9th Cir. 1975).

[5] *Domestic Communications Satellite Facilities*, 35 F.C.C. 2d 844 (1972), *recon. denied*, 38 F.C.C. 2d 665 (1972); *AT&T Domestic Satellite Authorization*, 42 F.C.C. 2d 654 (1973).

was the extent to which AT&T and the Associated Bell System companies were or should be required to interconnect their facilities with those of the non-Bell, non-telephone company communications common carriers. This issue included the question of whether AT&T and the Associated Bell System companies were in compliance with Commission policy when they filed with state commissions, rather than exclusively with this Commission, tariffs for services and facilities used for communications originating in one state and terminating in another state (including domestic satellite interconnection facilities). We also questioned whether Bell, by merely filing tariffs, could unilaterally abrogate its obligations under the Bell-Western Union exchange of facilities contracts.[6] On April 23, 1974, we released our Decision in Docket No. 19896.[7] We there concluded that Bell was required to establish without unreasonable delay physical connections with MCI and other specialized common carriers and that tariffs applicable to such interconnections must not be filed with state regulatory commissions, but rather with the Federal Communications Commission. Therefore, we ordered AT&T and the Bell System companies to furnish to MCI and other specialized common carriers the interconnection facilities essential to the rendition of all of their authorized interstate and foreign communications services, including the local exchange facilities necessary for furnishing Foreign Exchange (FX) service or for insertion into telephone company Common Control Switching Arrangements (CCSA), and to file with the Commission pursuant to Section 203 of the Act and Part 61 of the Commission's Rules, tariff schedules to cover interconnection facilities for all of the authorized interstate and foreign communications services of the specialized common carriers. We also held that Bell could not avoid its contractual obligations to Western Union by the unilateral act of filing a tariff. We therefore rejected the tariffs filed by Bell to the extent they purported to offer to Western Union interconnection facilities and services covered by the Bell-Western Union exchange of facilities contracts. In purported compliance with the Decision, Bell filed, on May 3, 1974, two new tariffs--Bell Operating Companies F.C.C. Tariffs No. 1 and No. 2—and supplements and revisions to all its earlier filed tariffs offering facilities to other common carriers.

DOCKET NO. 20099 PROCEEDINGS

6. By Memorandum Opinion and Order (Hearing Order) released July 5, 1974, 47 FCC 2d 660, we instituted the above-captioned investigation into all the Bell System Companies' tariffs offering facilities for use by other common carriers (see paragraph 7 below) as well as the Bell-Western Union exchange of facilities contracts. On August 1, 1974, 19 Bell System Companies each filed revised tariffs to be effective August 2, 1974, setting forth the rates and regulations applicable to the furnishing of local distribution area (LDA) facilities and inter-LDA facilities within the same state. These 19 tariffs have a uniform format, include specific state-by-state rate

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[6] For a full discussion of the factual background of Docket No. 19896, see 44 F.C.C. 2d 245 (1973).

[7] *Bell System Tariff Offerings of Local Distribution Facilities*, 46 F.C.C. 2d 413 (1974), *aff'd sub nom., Bell Telephone Company of Pennsylvania v. F.C.C.*, 503 F. 2d 1250 (3rd Cir. 1974), *petition for cert. filed* (No. 74-1229).

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schedules, and contain similar terms and conditions. These tariffs replaced Bell Operating Company Tariffs F.C.C. Nos. 1 and 2, Pacific Telephone and Telegraph Company Tariff F.C.C. No. 124, and the 24 LDA tariffs which were on file with the Commission, and the supplements and cross-references associated therewith. As a result of these tariff filings, the Commission, on its own motion, modified and clarified its July 5, 1974, Hearing Order in a Memorandum Opinion and Order released September 19, 1974, 49 F.C.C. 2d 729.

7. The originally filed tariffs offering facilities for use by other common carriers were all placed under investigation in the July 5 Hearing Order. The presently effective tariffs offering facilities for use by other common carriers, all of which were placed under investigation herein, are set forth in the appendix to our September 19, 1974 Memorandum Opinion and Order.

8. In its July 5, 1974, Hearing Order, as modified and clarified by its September 19, 1974, Memorandum Opinion and Order, the Commission ordered that the specific issues to be considered in this proceeding shall include, but not be limited to:

Tariff Construction and Application

1. Whether there is any justification for filing two entrance facilities tariffs rather than one;

2. Whether there is any justification for filing twenty separate tariffs offering intercity and local distribution facilities (local distribution facilities are not offered by AT&T Long Lines) rather than one;

3. Whether the entrance, intercity and local distribution facilities tariffs should be combined into one tariff of general application offering communications facilities to other common carriers;

4. (a) Whether Ohio Bell's Local Distribution tariff applies to the service Carpenter requests, and if not, whether Ohio Bell should be required to file revised tariffs with this Commission for the provision of such service; (b) Whether United should be required to file tariffs with this Commission for provision of the service Carpenter requests;

5. Whether, in view of the terms of any contracts (oral or otherwise) which may be found to exist concerning the provision of entrance (from both cable heads and earth stations), intercity or local distribution facilities to the international record carriers by any Bell System Operating Company, the Commission should require that such facilities be furnished pursuant to such contracts rather than pursuant to filed tariffs;

6. Whether the tariffs and tariff revisions filed by Bell on August 1, 1974, comply with Part 61 of the Commission's Rules and with the terms and conditions of the Commission's Decisions and Orders in *Bell System Tariff Offerings of Local Distribution Facilities* (Docket No. 19896);[8]

Rates and Charges

7. Whether there is any justification for different rate levels and pricing structures in different states;

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[8] Inclusion of this issue is without prejudice to the Commission's right to reject, in whole or in part, any of the tariffs under investigation herein, prior to the issuance of the First Report and Order.

8. Whether there is any justification for any limitation of liability due to Bell's negligence;

9. Whether there is any justification for credits for interruption of service on entrance facilities being allowed only if the interruption lasts two hours or more;

10. Whether there is any justification for credits for interruption of local distribution service being allowed only if the interruption lasts at least 24 hours;

11. Whether there is any justification for placing either a dollar or percentage limit on the amount of facilities that can be cancelled in any one month;

12. Whether there is any justification for establishing a tariff rate different from that in the Western Union contracts, for like service;

13. Whether there is any justification for charging twice as much for an effective four-wire facility as for a two-wire facility;

Restrictions on Use of Facilities

14. Whether there is any justification for prohibiting the use of facilities for administrative purposes;

15. Whether there is any justification for not providing facilities into abutting and nearby exchange areas as a general proposition;

16. Whether there is any justification for requiring Bell's carrier customers to file tariff provisions setting forth Bell's minimum protective criteria;

17. Whether there is any justification for restricting to one the number of cities, or local distribution areas, which can be served by means of a single earth station;

18. Whether there is any justification for restricting the terminal locations which will be served;

19. Whether there is any justification for prohibiting the use of local distribution facilities for transiting a local distribution area;

20. Whether there is any justification for providing only voice-grade facilities;

21. Whether there is any justification for prohibiting transmission in the digital mode above 75 baud;

22. Whether there is any justification for the prohibition against using ground as a return path for a digital signal;

23. Whether there is any justification for providing intercity facilities to a domestic satellite common carrier only if that carrier maintains a "central office" in the city to be served;

24. Whether there is any justification for limiting the provision of entrance facilities to supergroup bandwidth and above.

9. In addition, the following broad legal issues were designated for investigation herein:

1. Whether any of the charges, classifications, regulations, and practices contained in the tariffs or contracts are or will be unjust or unreasonable within the meaning of Section 201(b) of the Communications Act;

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2. Whether such tariffs or contracts will make an unjust or unreasonable discrimination or will subject any person or class of persons to undue or unreasonable prejudice or disadvantage, or will give any undue or unreasonable preference or advantage to any person or class of persons, within the meaning of Section 202(a) of the Communications Act;

3. Whether the Commission should prescribe just and reasonable charges, classifications, regulations, and practices to be hereafter followed with respect to the service governed by such tariffs and contracts and, if so, the charges, classifications, regulations, and practices that should be prescribed.

THE NEGOTIATIONS

10. Because of the nature and importance of the matters designated for investigation herein, the Commission adopted expedited procedures consisting of three rounds of submissions—comments, responses and replies—rather than an oral trial-type hearing. However, before these formal procedures had begun, AT&T expressed its desire to work informally with the parties and the Commission with the goal of expeditiously resolving as many of the issues herein as possible. Therefore the Chief, Common Carrier Bureau, pursuant to the authority delegated under Section 0.303(c) of the Commission's Rules (47 C.F.R. § 0.303(c)), postponed the procedural dates [9] to allow the parties to enter into and continue informal settlement discussions, under the aegis of the Commission.

11. Negotiations began October 3, 1974 and continued almost daily for just over five months. As a result of these negotiations, the participating parties have reached agreement on a settlement, as reflected in the Settlement Agreement, and have filed the Joint Motion requesting the relief specified in paragraph one above.

THE SETTLEMENT

12. All the terms of the settlement are contained in the Settlement Agreement (including its six appendices) which is attached hereto. This Settlement Agreement, among other things, permits the offer of interconnection facilities without many of the restrictions formerly imposed, enlarges the scope of the offering, establishes new levels of charges for certain categories of facilities, and for the first time, establishes generally applicable operating and technical relationships between Bell and other common carriers.

13. We believe that the terms of the settlement, including the responsibilities undertaken by the parties, are in the public interest because they expedite and further the implementation of established Commission policy. Furthermore, as noted by the parties, the settlement affords an expeditious and acceptable compromise of differences on matters which would otherwise necessitate substantial time, expense and effort to resolve through formal Commission processes. Therefore, we will accept the settlement (without necessarily approving it) as a disposition, without prejudice, of Docket No. 20099. In view of this action, we

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[9] See Memorandum Opinion and Order, Mimeo No. 31116, released September 27, 1974; and Memorandum Opinion and Order, Mimeo No. 32655, released November 6, 1974.

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believe that a decision on the merits of the issues set for investigation in this proceeding is unnecessary, and we will therefore terminate, without prejudice, the proceedings in Docket No. 20099. We wish to emphasize that our action herein should not be interpreted as modifying or derogating in any way the obligations imposed upon AT&T and the Associated Bell System companies by earlier Decisions, including our Decision in Docket No. 19896, *supra* note 4.

14. We will expect all parties to the Settlement Agreement not only to comply with its terms, but also to adhere to its spirit. We expect to closely monitor the implementation of the Settlement Agreement, and to this end, we endorse the proposal to conduct, as necessary, meetings of the parties under the aegis of the Commission's Common Carrier Bureau to review the progress made in implementing the Settlement Agreement. It is our hope that, through these meetings, the parties will be able to informally resolve any differences which may arise. However, we wish to make clear that no one is precluded from bringing to the Commission's attention any matter which it believes requires Commission action.

15. In addition to the above general comments, we wish to comment in greater detail on certain specific aspects of the settlement.

Tariff Regulations

16. Each of the nineteen Associated Bell System companies will revise its presently effective OCC facility tariff (see paragraph 7, above) as set forth in the Illustrative Tariff (Appendix A to the Settlement Agreement). Further, AT&T will revise its Tariff F.C.C. No. 266 as set forth in Appendix B to the Settlement Agreement. All our comments, with respect to tariff regulations are equally applicable to the Illustrative Tariff and to AT&T's Tariff F.C.C. No. 266.

17. Section 2.6 of the Tariff defines Other Common Carrier as Specialized Common Carriers, Domestic and International Record Carriers and Domestic Satellite Carriers. It appears that the intent of this provision is to exclude radio common carriers (RCCs) from the class of carriers to which facilities are offered under the OCC facility tariffs. RCCs presently deal with the Bell System primarily on a contract basis. We believe there is a substantial question as to: (1) whether, rather than continuing the present contractual relationship, Bell should be required to offer interconnection facilities to RCCs pursuant to the OCC tariffs represented by the Illustrative Tariff, or (2) whether the rates, terms and conditions governing the provision of facilities to the RCCs should be contained in a different set of tariffs on file with the Commission. We are therefore directing the Chief, Common Carrier Bureau to conduct informal meetings with Bell, interested RCCs and other interested parties, to consider these questions. At the conclusion of these meetings, the Commission will decide what further action, formal or otherwise, is necessary or appropriate.

18. Among the more significant changes reflected in the Illustrative Tariff is the enlargement of the scope of the offering (see Section 2.1.4). The presently effective tariff offers only voice grade facilities, wire pair facilities, special facilities, reserved complements and medium speed digital facilities within a "local distribution area" and only voice grade

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facilities between points in different "local distribut[illegible] The tariffs to be filed however, which make no reference to [illegible]tribution area", offer: (a) voice grade facilities, (b) voice g[illegible] facilities, (c) audio facilities, (d) 50 kbps data facilities, [illegible]0 kbps data-alternate voice grade facilities, (f) wire pair facilities, (g) medium speed digital facilities, (h) voice grade connecting facilities, (i) voice grade data connecting facilities, (j) video facilities, (k) specialized facilities, (l) reserved complements, and (m) telegraph grade facilities within the international gateway cities. In addition, as noted in paragraph 2 of the Settlement Agreement, the Bell System companies will provide 56 kbps data facilities to the OCC's at such times as those facilities become available.

19. As a result of the enlargement of the offering, the OCC's now have available to them the option of obtaining from Bell, various types of intercity facilities to remote areas, rather than constructing these facilities themselves. Before granting an OCC's application pursuant to Section 214 of the Communications Act, to acquire these facilities, we will consider whether it is in the public interest for the OCC to acquire such facilities from Bell rather than constructing the facilities itself, and whether a grant of the Section 214 application would be consistent with Commission policy. We will take into account any decision which the Commission may issue in its inquiry in Docket No. 20097, involving generally the question of resale of common carrier services.[10]

Tariff Rates

20. The Settlement Agreement provides for establishment of reduced OCC facility tariff rates reflecting a thirty percent reduction from the rates effective August 2, 1974 for intraexchange voice grade and wire pair facilities and a twenty-one percent reduction from the rates effective August 2, 1974 for interexchange voice grade facilities within a single state and wholly within an area comprising all those exchanges whose rate centers are forty miles or less from the rate center applicable to the OCC terminal location. In accordance with the Settlement Agreement, these reduced rates will be effective retroactively to December 1, 1974. We believe the public interest is served by implementation of these reduced rates as quickly as possible, as is contemplated by the Settlement Agreement, since this is one of the many matters on which the parties compromised their differences, and thus allowed an expeditious settlement of this proceeding. In allowing these reduced rates to be implemented, we note that these rates will apply to all OCCs, whether or not they are parties to this Settlement Agreement.

21. The Settlement Agreement provides that the reduced tariff rates will be effective throughout the Interim Period (as defined in footnote 2 of the Settlement Agreement). During the Interim Period, new OCC tariffs containing new rate schedules supported as required by Part 61 of the Commission's Rules, will be developed. Such new tariffs are not to become effective until six months from the date of such filing, including any suspension period which the Commission might

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[10] *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Notice of Inquiry and Proposed Rule Making, 47 F.C.C. 2d 644 (1974).

impose. In order to implement this part of the agreement we will require the Bell System companies to file these new tariffs on three months notice rather than the normal two months notice. If we choose not to suspend these tariff revisions, then under the terms of the Settlement Agreement, the Bell System companies are obligated to voluntarily extend the effective date of these tariff revisions for the duration of the six month period.

Facilities For International Record Carriers

22. As a result of the agreement set forth in Appendix C to the Settlement Agreement, the Bell System companies concerned are incorporating in their OCC facility tariffs a specific offering of telegraph grade facilities within the international gateway cities (*see* Illustrative Tariff, sections 2.1.4 (M) and 3.11), and thus these facilities will be furnished to the international record carriers (IRCs) pursuant to the OCC tariffs.

23. The Settlement Agreement points out, however, that, notwithstanding the furnishing of similar facilities to other common carriers pursuant to tariffs, entrance and intercity facilities furnished by AT&T to the IRCs continue to be furnished pursuant to contract. In apparent support, the parties noted "the unique needs of the [IRCs] between gateway cities and for entrance channels from cable heads and earth stations to those carriers' central offices in metropolitan areas." We still believe that a substantial question exists as to whether we should order AT&T to provide these facilities pursuant to filed tariffs rather than pursuant to contracts, and we will take appropriate action on this matter in a separate order.[11]

24. Since the IRCs offer international private line (sometimes referred to as "leased channel") service only between their gateway city operating offices and overseas points, we will also examine the question of whether it is in the public interest for the IRCs to require their gateway city private line customers to obtain, directly from the local telephone company, facilities between the customer's premises and the IRC's operating office. Inquiry into this matter will be confined to the presently established gateway cities, and will not, in any way, be concerned with the question of international private line service to hinterland customers.

Revision of AT&T Tariff F.C.C. No. 260

25. Although AT&T's Tariff F.C.C. No. 260 was not placed under investigation herein, the parties discussed allegations of price disparity for interexchange channels furnished to customers by Bell System companies between points within a single state depending upon whether an interstate channel arranged for use in connection with such a channel is provided to the same customer by a Bell System company or an OCC. As a result of these discussions, AT&T filed the tariff revisions set forth in Appendix E. The tariff revisions now provide that AT&T's interstate private line service tariff (Tariff F.C.C. No. 260) is applicable to "services between points within the bound-

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[11] *Interconnection Facilities Provided to the International Record Carriers*, FCC 75-451 (released May 7, 1975).

aries of a State which services are furnished to a customer for communicating with points outside the State when connected by means of Telephone Company arrangements with services furnished by the Telephone Company for through communications service" or ". . . with facilities of Other Participating Carriers." We believe these tariff revisions remove the alleged discrimination and, to that end, are consistent with the Communications Act.

26. We note that both tariff revisions contain the phrase "when connected by means of Telephone Company arrangements". Thus, the application of AT&T's Tariff F.C.C. No. 260 to a channel between points within a state which is connected to an interstate channel appears to depend upon whether AT&T provides the switch or connection between the two channels. This raises the questions of: (1) are the "Telephone company arrangements" referred to in the tariff revisions technically and operationally necessary, and (2) does an otherwise interstate communication become intrastate because the connection between facilities of one or more carriers is accomplished by means of customer-provided equipment. We will investigate these questions in a proceeding to be instituted by separate order of the Commission.[12]

Local Distribution Service to Customers

27. Although the Commission has long ago stated its policy that "established carriers with exchange facilities should, upon request, [not only] permit interconnection or leased channel arrangements on reasonable terms and conditions to be negotiated with the new carriers, [but] also afford their customers the option of obtaining local distribution service under reasonable terms set forth in the tariff schedules of the carrier." [13] such tariffs have never been filed. In the Settlement Agreement, the Bell System companies state their intentions to file such tariffs, but there is no indication as to when this filing may be made. Therefore we will direct the Bell System companies to file such tariffs within 60 days from the release of this order.

DISMISSAL OF OCC PLEADINGS

28. As stated at paragraphs 6 and 7 above, numerous petitions to reject or suspend Bell's OCC facility tariffs were filed in December, 1973 and January, 1974, and such petitions were denied at that time, to the extent they requested suspension or rejection. However, the Commission stated that it was deferring further action on these petitions. Furthermore we stated that an accounting order was not necessary, since we were treating these pleadings as complaints under Section 208 of the Communications Act. We now believe that these pleadings, to the extent they request investigation, are moot and we will dismiss them. In order to allow these parties to pursue their complaints under Section 208 if they wish, without being barred by any applicable statute of limitations, these pleadings, to the extent they are considered complaints under Section 208, will automatically be considered dismissed 30 days from the release of this order unless a complainant

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[12] *Application of AT&T's Private Line Service Tariff* (Tariff F.C.C. No. 260), FCC 75-452 (released May 7, 1975).

[13] *Specialized Common Carrier Services, supra* note 4.

files, during such 30 day period, a statement with the Commission that it intends to pursue such complaint. Furthermore, MCI Telecommunications Corporation's Petition to Reject, dated August 30, 1974, and its Petition for Emergency Interim Relief, dated October 2, 1974 will be dismissed as moot.

RESPONSIVE PLEADINGS

29. The three pleadings filed in response to the Joint Motion and Settlement Agreement are listed in paragraph two above. The matters raised in the comments of the National Association of Radiotelephone Systems, Inc., Tel-Illinois, Tel-Missouri, Inc., and DPRS, Inc. and in the opposition of Carpenter Radio Company are dealt with in paragraph 17 above; and the matters raised by the Independent Data Communications Manufacturers Association, Inc. are fully treated in paragraph 26 above.

ORDER

30. In view of the foregoing, **IT IS ORDERED** That the Joint Motion filed March 13, 1975 by the parties named in paragraph one above **IS HEREBY GRANTED**, and the opposition thereto, filed by Carpenter Radio Company, **IS DENIED**.

31. **IT IS FURTHER ORDERED** That the settlement, as reflected in the Settlement Agreement, **IS ACCEPTED** as a disposition without prejudice of F.C.C. Docket No. 20099.

32. **IT IS FURTHER ORDERED** That the tariffs represented by Appendices A, B and F to the Settlement Agreement are to be filed within thirty days from the release of this order.

33. **IT IS FURTHER ORDERED** that, to allow expeditious implementation of the settlement, AT&T and the Associated Bell System companies, **ARE HEREBY GRANTED** the following waivers of Part 61 of the Commission's Rules:

Section waived:	*Applicable to tariffs represented by*
61.38	Appendices A, B, F.
61.55(e)	Appendices A, B.
61.58	Appendices A, B, F.
61.74(a)	Appendix B, section 4.

34. **IT IS FURTHER ORDERED** That AT&T and the Associated Bell System companies are directed to file tariffs offering local distribution service directly to customers within 60 days from the release of this order.

35. **IT IS FURTHER ORDERED** That the pleadings listed in paragraphs 6 and 7 above, to the extent they request investigation, **ARE DISMISSED** as moot; and, to the extent they are considered complaints under Section 208 of the Communications Act, **ARE DISMISSED** effective 30 days from the release of this order unless the complainant files within such 30 day period a statement with the Commission that it intends to pursue such complaint.

36. **IT IS FURTHER ORDERED** That MCI Telecommunications Corporation's Petition to Reject, filed August 30, 1974, and its Petition For Emergency Interim Relief, filed October 2, 1974 **ARE DISMISSED** as moot.

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37. IT IS FURTHER ORDERED That the proceedings in F.C.C. Docket No. 20099 ARE TERMINATED without prejudice.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

Before the

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. Offer of Facilities for Use by Other Common Carriers	Docket No. 2009

SETTLEMENT AGREEMENT

This Settlement Agreement, executed this 13th day of March, 1975, by and between the undersigned communications common carriers has been concluded as a result of the informal settlement discussions, conducted under the aegis of the Commission with the direct participation of representatives of the Chief, Common Carrier Bureau, in connection with the matters set for hearing by the Commission in its Memorandum Opinion and Order herein, released July 5, 1974, 47 F.C.C. 2d 660, as modified by the Commission's Memorandum Opinion and Order herein, released September 19, 1974, 49 F.C.C. 2d 725.

WHEREAS, the undersigned parties to the above-captioned proceeding have reached agreement on a settlement which will serve the public interest because it affords, for the Interim Period (as hereinafter defined), an expeditious and acceptable compromise of differences on matters which would otherwise necessitate substantial time, expense and effort to resolve through formal Commission processes.

NOW, THEREFORE, the understandings and undertakings to which the undersigned parties have agreed are as follows:

TARIFF REGULATIONS

1. Forthwith after the effective date of this Settlement Agreement, AT&T and its Associated Bell System Companies (Bell System companies) will revise, as set forth in Appendices A and B, presently effective OCC facility tariffs filed with the Commission.[1] Subject to the grant by the Commission of appropriate Special Permissions, such revisions will be filed to be effective on one day's notice. These tariff revisions reflect agreement among the parties as to an acceptable compromise for the Interim Period[2] of various matters in Docket No. 20099 dealing with tariff construction and application, restrictions on use of facilities and regulations regarding the type of facilities offered. To the extent the tariff revisions may not so indicate on their face, the bases for this agreement are mutually understood and agreed to be as follows:

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[1] The presently effective "OCC facility tariffs" filed with the Commission on August 1, 1974 are: American Telephone and Telegraph Company Tariffs Nos. 265 and 266; The Bell Telephone Company of Pennsylvania Tariff No. 37; Chesapeake and Potomac Telephone Companies Tariff No. 1; Cincinnati Bell, Inc. Tariff No. 33; Illinois Bell Telephone Company Tariff No. 37; Indiana Bell Telephone Company, Inc. Tariff No. 32; Michigan Bell Telephone Company Tariff No. 36; Mountain States Telephone and Telegraph Company Tariff No. 58; New England Telephone and Telegraph Company Tariff No. 38; New Jersey Bell Telephone Company Tariff No. 32; New York Telephone Company Tariff No. 38; Northwestern Bell Telephone Company Tariff No. 44; Ohio Bell Telephone Company Tariff No. 26; The Pacific Telephone and Telegraph Company Tariff No. 125; Pacific Northwest Bell Telephone Company Tariff No. 3; South Central Bell Telephone Company Tariff No. [illegible]; Southern Bell Telephone and Telegraph Company Tariff No. 34; Southern New England Telephone Company Tariff No. 32; Southwestern Bell Telephone Company Tariff No. 64; Wisconsin Telephone Company Tariff No. 24.

[2] For purposes of this Settlement Agreement, "Interim Period" is defined as the period from the effective date of this Settlement Agreement to the time further OCC facility tariff rate revisions, supported as required by Part 61 of the Commission's Rules, become effective. Further OCC facility tariff rate revisions to be developed during the Interim Period shall be filed no earlier than twelve months after the effective date of this Settlement Agreement; provided, however, that tariff rate revisions which may be filed in AT&T Tariff F.C.C. No. [illegible] and incorporated by reference into AT&T Tariff F.C.C. No. [illegible] and tariff rate revisions contemplated by paragraph 1(d), shall not be subject to the foregoing twelve month limitation or operate to terminate the Interim Period.

FCC 75-451

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
INTERCONNECTION FACILITIES PROVIDED TO THE INTERNATIONAL RECORD CARRIERS } Docket No. 20452

MEMORANDUM OPINION AND ORDER

(Adopted April 23, 1975; Released May 7, 1975)

BY THE COMMISSION:

1. As noted in our Memorandum Opinion and Order in Docket No. 20099, released September 19, 1974,[1] certain facilities which AT&T furnishes to international record carriers (IRCs) between the IRCs' operating offices and their overseas facilities (earth stations and cable heads) and between and among their operating offices (e.g., New York and San Francisco gateways) are provided under contract rather than pursuant to tariffs. Similar facilities supplied to domestic satellite common carriers, however, are tariffed (*see*, e.g., AT&T Tariff F.C.C. Nos. 265 and 266, and Pacific Telephone and Telegraph Co. Tariff F.C.C. No. 123). Further, interconnection facilities provided to the IRCs within the gateway cities are also subject to tariff.[2] In answer to a June 6, 1974 letter from the Chief, Common Carrier Bureau, AT&T declined to file tariffs covering the provision of such facilities on the grounds that (1) the Commission has never specifically required such a filing, (2) such a filing would be inconsistent with the Bell/Western Union contract ruling in the Commission's decision in *Bell System Tariff Offerings*, Docket 19896, 46 F.C.C. 2d 413 (1974), and (3) the contracts have been mutually satisfactory to AT&T and each of the IRCs. It appears to us that there is no significant difference between the interconnection facilities provided to the IRCs and those provided under tariff to the specialized common carriers including domestic satellite common carriers. We therefore believe that a substantial question exists as to whether we should order AT&T to provide these facilities pursuant to filed tariffs rather than pursuant to contracts.

2. Within the gateway cities in which they are authorized to operate, the IRCs offer telex service from overseas points directly to their customers' premises. Similarly, the domestic specialized and satellite common carriers offer their services directly to their customers' premises. However, the IRCs offer international private line (sometimes referred to as "leased channel") service only between overseas points and their gateway city operating offices. Thus, the IRCs' gateway

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[1] *Offer of Facilities for Use by Other Common Carriers*, 49 F.C.C. 2d 729 (1974).

[2] *Id.* See also Decision in *Offer of Facilities for Use by Other Common Carriers*, FCC 75-450 (released May 7, 1975).

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OMMISSION

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city customers must obtain, directly from the local telephone company, the connecting facilities between the IRC's operating offices and the customers' premises. Therefore we will examine the question of whether it is in the public interest for the IRCs to require their gateway city private line customers to obtain, directly from the local telephone company, facilities between the customer's premises and the IRC's operating office. Inquiry into this matter will be confined to the presently established gateway cities, and will not, in any way, be concerned with the question of international private line service to hinterland customers.

3. Accordingly, IT IS ORDERED that, pursuant to the provisions of Sections 4 (i), 201-205, 211 and 403 of the Communications Act, an investigation is hereby instituted into the following matters.

(1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts; and

(2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers.

4. IT IS FURTHER ORDERED that AT&T, French Telegraph Cable Company, ITT World Communications Inc., RCA Global Communications, Inc., TRT Telecommunications, Inc. and Western Union International, Inc. are hereby named PARTIES RESPONDENT herein.

5. IT IS FURTHER ORDERED that any interested persons may participate herein by filing comments on the above matters within 30 days of the publication of this order in the Federal Register and replies within 15 days of the filing of comments.

6. IT IS FURTHER ORDERED that this is a restricted rulemaking proceeding and the Commission's decision herein will be based on matters submitted for or incorporated into the record herein.

7. IT IS FURTHER ORDERED that an original and 14 copies of all comments and replies shall be filed with the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

NOTICE OF APPEARANCE

ITT World Communications Inc. (ITT Worldcom) hereby appears and notifies the Commission of its intention to participate in the above captioned proceeding.

Respectfully submitted,

ITT World Communications Inc.

By

Joseph J. Jacobs
Joseph J. Jacobs

Its Attorney
67 Broad Street
New York, N.Y. 10004

Dated: May 12, 1975

CERTIFICATE OF SERVICE

I, Kathleen E. Smith, certify that I have this 12th day of May, 1975 sent a copy of the foregoing "Notice of Appearance" by United States mail, first class postage prepaid, to the following:

Mr. Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Charles F. Martin, Esq.
American Telephone and
Telegraph Company
32 Avenue of the Americas
New York, N.Y. 10013

Mr. Jacques A. Bergener
The French Telegraph Cable Company
25 Broad Street
New York, N.Y. 10004

Francis J. DeRosa, Esq.
RCA Global Communications, Inc.
60 Broad Street
New York, N.Y. 10004

David H. Lubetzky, Esq.
Roderick A. Mette, Esq.
TRT Telecommunications Corporation
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Washington, D.C. 20006

Robert Michelson, Esq.
Western Union International, Inc.
One W.U.I. Plaza
New York, N.Y. 10004

Kathleen E Smith

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers.)

NOTICE OF APPEARANCE

Western Union International, Inc. (WUI) hereby appears and notifies the Commission of its intention to participate in the above-captioned proceeding.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Robert Michelson
Attorney

One WUI Plaza
New York, New York 10004

Dated: May 20, 1975

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

file

In the Matter of

Interconnection Facilities)
Provided to the International) Docket No. 20452
Record Carriers)

PETITION FOR EXTENSION OF TIME

RCA Global Communications, Inc. (RCA Globcom) hereby requests that the Commission grant a fourteen day extension of the dates established for the filing of comments and replies in the above-captioned matter. In support of this Petition, RCA Globcom submits these considerations:

1. By its Memorandum Opinion and Order (the "Order") released on May 7, 1975, the Commission designated American Telephone and Telegraph Company (AT&T), French Telegraph Cable Company, ITT World Communications Inc. (ITT Worldcom), RCA Globcom, TRT Telecommunications, Inc., and Western Union International, Inc. (WUI) as parties respondent to this proceeding. The Commission further provided that any interested persons may participate in this proceeding by filing comments on the matters set forth in the Order within thirty days of the publication of the Order in the Federal Register, and that replies are to be filed within fifteen days thereafter. The Order was

published in the Federal Register on May 13, 1975, thereby establishing June 12, 1975 as the deadline for filing comments, and June 27, 1975 as the deadline for filing replies.

2. The release of the Order took place at the same time that intensive negotiations have been proceeding for the purpose of arriving at a settlement in the Commission's Docket No. 20199, which deals with the interconnection of program transmission services between AT&T and the Miscellaneous Common Carriers. These negotiations took place on an almost daily basis during the period from May 14 to May 30. The same legal counsel and many of the other staff personnel of RCA Globcom that have been involved in the Docket No. 20199 negotiations will also be involved in the preparation of comments in this proceeding. Therefore, because the settlement negotiations in Docket No. 20199 have been so extremely time consuming, there has not yet been sufficient time for RCA Globcom to give adequate consideration to the matters at issue in this proceeding.

3. In addition, the matters at issue in this proceeding are of basic importance to RCA Globcom's international telecommunications business, and the disposition of this proceeding could well have serious technical, operational and financial impact on that business. Therefore, even if RCA Globcom's staff resources had not been tied up on other significant matters pending before the Commission, the thirty-day comment period established by the Order herein would not have been

entirely sufficient for the investigation and consideration required for RCA Globcom to provide a proper response in this proceeding.

4. Finally, counsel for RCA Globcom has been advised that AT&T, ITT Worldcom, and WUI either support or do not oppose the extension of time requested herein.

WHEREFORE, in consideration of the matters set forth above, RCA Globcom believes that the public interest would be served by an extension of fourteen days of the deadlines for filing comments and replies in this proceeding. Accordingly, RCA Globcom requests that the deadline for filing comments be extended to June 26, 1975, and the deadline for filing replies be extended to July 11, 1975.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Denis J. Brion

Its Attorneys
2030 M Street, N. W.
Washington, D. C. 20036

June 4, 1975

CERTIFICATE OF SERVICE

I, Lili Holcombe, hereby certify that a copy of the foregoing PETITION FOR EXTENSION OF TIME was served this 4th day of June, 1975 by United States mail, postage prepaid, to the following:

Harry A. Davenport, Esq.
American Telephone & Telegraph Co.
195 Broadway
New York, NY 10007

Warren Y. Zeger, Esq.
COMSAT General Corporation
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Washington, DC 20024

Daniel J. Harrold, Esq.
Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Mr. J. A. Berenger
The French Telegraph Cable Company
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New York, NY 10004

Joseph J. Jacobs, Esq.
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Roderick A. Mette, Esq.
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1747 Pennsylvania Ave., N.W.
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Robert Michelson, Esq.
Western Union International, Inc.
One WUI Plaza
New York, NY 10004

s/ Lili Holcombe

070

file: Facilities Agreement Inquiry
# 20452

ITT World Communications Inc.

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-3300

June 5, 1975

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Common Carrier Bureau
1919 M Street, N.W.
Washington, D.C.

Re: FCC Docket No. 20452 - Interconnection Facilities Provided to the International Record Carriers

Dear Mr. Mullins:

ITT World Communications Inc. (ITT Worldcom), hereby supports the request of RCA Global Communications Inc. (RCA Globcom), that the Commission grant a 14 day extension of the dates established for the filing of comments and replies in the above-referenced matter.

ITT Worldcom agrees with the statements made by RCA Globcom in support of its request for an extension of time. Given the large number of proceedings in which ITT Worldcom has been involved, as well as the beginning of summer vacation periods which make it difficult to obtain information necessary to prepare a response, ITT Worldcom believes that the public interest would be served by granting the 14 day extension requested by RCA Globcom in this matter.

Very truly yours,

Agatha Modugno

Agatha M. Modugno
Attorney

cc: Messrs. DeRosa, Brian (RCA), Davenport (AT&T), Zeger (Comsat), Harrold (FCC), Berenger (French Cable), Mette (TRT), Michelson (WUI)

RECEIVED
JUN 25 1975
COUNSEL
WASHINGTON

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

COMMENTS

American Telephone and Telegraph Company ("AT&T"), pursuant to paragraph 5 of the Commission's Memorandum Opinion and Order herein ("Order"), released May 7, 1975 (FCC 75-451),* respectfully submits the following comments:

1. The Commission's May 7, 1975 Order requests comments on whether it should require the international record carriers ("IRCs") to obtain entrance facilities - both from cable heads and earth stations - and intercity facilities from AT&T pursuant to tariff rather than contract; and, in addition, whether the IRCs should be required to offer international private line service directly to the premises of the IRCs' gateway city customers.

2. AT&T has been providing entrance and intercity facilities to IRCs pursuant to contract for many years. Certain

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* By Order released June 11, 1975 (Mimeo 51382), the Chief, Common Carrier Bureau extended the time for filing comments herein until June 23, 1975.

Bell Operating Companies have also provided intercity entrance facilities from radio sites to the IRCs under long standing special agreements. These contract arrangements have heretofore proved to be satisfactory to both the Bell System and the IRCs, and take into account the discrete needs of the IRCs for facilities between gateway cities and for entrance channels from cable heads, radio sites and earth stations to their operating centers in metropolitan areas. Nevertheless, AT&T is prepared to provide such facilities to the IRCs pursuant to tariffs at appropriate rates if the Commission determines that the public interest would be served by discontinuing the present arrangements.

3. AT&T is unaware of any reason why the IRCs should not be required to furnish under tariff international private line service directly to their customers' premises in gateway cities. Local distribution facilities are presently available to the IRCs under the provisions of currently effective Bell System Operating Company OCC facility tariffs on file with the Commission. These facilities enable IRCs to provide end-to-end private line service to their customers in gateway cities. Indeed, such facilities are presently utilized by the IRCs in providing certain other services under tariff on an end-to-end basis within the gateway cities.

4. AT&T recognizes that changes in existing arrangements of the nature under consideration herein could have a significant impact on IRCs or their customers. Accordingly, if the Commission determines that the public interest would be served thereby, AT&T is prepared to participate in discussions under the aegis of the Commission either before or after such changes may be adopted for the purpose of considering the proposed arrangements.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/ Alfred C. Partoll
Alfred C. Partoll

By /s/ H. A. Davenport
H. A. Davenport

195 Broadway
New York, New York 10007

By /s/ Alfred G. Walton
Alfred G. Walton

32 Avenue of the Americas
New York, New York 10013

Its Attorneys

June 23, 1975

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Comments" was served this 23rd day of June, 1975, by mailing copies thereof by United States mail, postage prepaid, to the following persons:

Mr. Walter R. Hinchman, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
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Mr. Francis J. DeRosa
Mr. Denis J. Brion
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/s/ John T. Egan
John T. Egan

✓ EFM [illegible] PS [illegible]

12/75 [illegible]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
[illegible]
LAW DEPARTMENT

In the Matter of	)	
	)	
Interconnection Facilities	)	Docket No. 20452
Provided to the International	)	
Record Carriers	)	

COMMENTS

ITT World Communications Inc. (ITT Worldcom) in response to the Commission's Memorandum Opinion and Order (Order) released May 7, 1975,[1] as modified by the Order of the Chief, Common Carrier Bureau released June 11, 1975,[2] hereby submits its comments in the above matter.

The Order requests comments from ITT Worldcom on two issues:

(1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts; and

(2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers.

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[1] FCC 75-451, Mimeo No. 34648.

[2] Mimeo No. 51382.

ISSUE 1

With respect to Issue 1, ITT Worldcom continues to adhere to the position stated in its letter to the Chief, Common Carrier Bureau dated June 25, 1974 that "requiring AT&T to file tariffs covering the captioned facilities would be seriously prejudicial to ITT Worldcom."

An affirmative answer to the question posed in Issue 1 would result in the Commission, on its own motion, regulating by tariff, the furnishing of certain highly specialized facilities, which have for the past seven years been furnished pursuant to a contract between American Telephone & Telegraph Company (AT&T) and ITT Worldcom. Both AT&T and ITT Worldcom have advised the Commission that they are well satisfied with this contractual arrangement.[3/] And ITT Worldcom is unaware that any third party has protested the existence of this contractual arrangement or any provision thereof. Indeed, the settlement agreement which the Commission accepted as the basis for the termination of FCC Docket No. 20099 specifically recognized the "unique needs of the international record

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[3/] Order, p. 1, para. 1. See also letter from T.W. Scandlyn, AT&T, to Chief, Common Carrier Bureau, dated June 26, 1974.

carriers between gateway cities and their entrance channels for cable heads and earth stations to those carriers' central offices."[4/] This agreement was signed by virtually all companies[5/] which might have any basis for complaint as to the existence of these contracts or their terms and conditions.

At a time when the President of the United States has announced his intention of meeting with the commissioners of the independent regulatory agencies (presumably including the Commission) to discuss steps "to curtail federal regulation of business"[6/] and has announced his intention to eliminate "'needless

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[4/] Memorandum Opinion And Order (FCC 75-450), released May 7, 1975, p. 11.

[5/] This agreement was signed by American Telephone and Telegraph Company, The Associated Bell System Companies, American Satellite Corporation, Data Transmission Company, ITT World Communications Inc., MCI Telecommunications Corporation, Interdata Communications, Inc., MCI-New York West, Inc., Microwave Communications, Inc., N-Triple-C Inc., RCA Global Communications, Inc., Southern Pacific Communications Company, Transportation Microwave Corporation, The Western Union Telegraph Company, Western Tele-Communications Inc. and Western Union International, Inc.

[6/] The New York Times, June 18, 1975 ed., p. 38, col. 1.

paper work'"[7], the concept of requiring additional and totally unnecessary tariff filings, and presumably the cost justification required by Section 61.38 of the Commission's Rules and Regulations, seems totally counter-productive.

There is no question that the interconnection facilities furnished to the international record carriers are properly the subject of federal jurisdiction. Consequently, the issue of whether federal or state jurisdiction applies to these facilities, which was a basic consideration underlying the Commission's decision in Bell System Tariff Offerings (Docket No. 19896),[8] is not present. Moreover, the international record carriers do not compete directly with AT&T.[9] Therefore, there is little danger that AT&T will furnish these facilities in a manner designed to further its competitive position vis-a-vis another carrier, thereby possibly necessitating the additional control which having these facilities furnished pursuant to tariff might give the Commission.

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[7] The New York Times, June 18, 1975 ed., p. 38, col. 1.

[8] 46 F.C.C. 2d 413 (1974).

[9] Except to a limited extent in the provision of service between the U.S. mainland and Hawaii.

Certainly, the Communications Act of 1934, as amended, (Act) makes it apparent that Congress intended that some types of carrier-to-carrier relationships would be governed by contract rather than tariff. Section 211(a) of the Act requires the filing of "contracts, agreements or arrangements with other carriers". The Commission itself stated, last April, with respect to such contracts that:

> "...it is reasonable to conclude that the provision which requires the contracts to be filed confers upon the Commission the authority to determine whether the terms and conditions thereof are consistent with the provisions of the Act." 10/

Since the Commission has the power to determine whether the terms and conditions of contracts which now exist between AT&T and the international record carriers, with respect to the subject interconnection facilities, are "consistent with the...Act", 11/ and the contracts themselves, having been jointly negotiated by the IRC's,are identical, and no international record carrier is placed in a more favorable position that its competitors, ITT Worldcom fails to appreciate why the subject interconnection facilities should be furnished pursuant to tariff rather than contract. The

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10/ 46 F.C.C. 2d 413 (1974).

11/ ITT Worldcom believes that with respect to future changes in these contracts, it is preferable if they are the subject of negotiated contract amendments rather than tariff revisions which can be unilaterally filed by AT&T, and only opposed by the use of the Commission's processes.

only reason for this advanced by the Commission is the purely conclusionary statement that "there is no signficant difference between the interconnection facilities provided by the IRC's and those provided by tariff to the specialized carriers including domestic satellite carriers".[12/] Even this conclusionary statement is erroneous with respect to the great bulk of the facilities provided pursuant to these agreements.[13/]

Most of the facilities provided to ITT Worldcom and the other IRC's pursuant to the contracts in question are facilities which run from the cable head points to ITT Worldcom's operating center in New York. These are nothing more or less than U.S. extensions of these oversea cables. They are facilities which are dedicated to the extension of the oversea cable circuitry and, for that reason readily distinguishable from the facilities provided to specialized common carriers under the various O.C.C. tariffs. At the time the agreement between AT&T and ITT Worldcom was entered into,

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[12/] Order, p. 1.

[13/] It is probably accurate with respect to some of the circuits between ITT Worldcom's operating centers in New York and its operating centers in other "gateway" cities. However, this seems immaterial since such facilities are now being provided by Western Union and various specialized common carriers and domestic satellite common carriers and at rates below those charged by AT&T to ITT Worldcom under the contract.

(May 3, 1968). ITT Worldcom believed that these facilities should be subject to the same type of IRU arrangement as the cables they were connected to. AT&T was opposed to the introduction of the IRU concept with respect to domestic facilities and offered to provide these facilities to ITT Worldcom on a cost basis generally comparable to that which ITT Worldcom would have incurred if it had acquired IRU interests in these facilities.

ITT Worldcom is frankly concerned that if the Commission orders AT&T to provide these facilities pursuant to tariff rather than pursuant to the present contract, which is acceptable to both parties, that the tariff rates specified by AT&T would be higher than the rates now provided by contract. Moreover, since withdrawal of its request for IRU interests in the subject facilities was given to AT&T as a consideration for the contract in question, it would be manifestly inequitable for the Commission, by administrative fiat, to change the position of the parties to this agreement at this late date in the absence of any overriding public interest reason for doing so.

ITT Worldcom believes that action by the Commission mandating abolition of the existing AT&T/ITT Worldcom contract with respect to the subject facilities could not properly be taken without according ITT Worldcom a "full opportunity for hearing" as required by Section 205(a) of the Act. In that event, ITT Worldcom requests that its right to acquire an IRU interest[14/] in the subject interconnection facilities be considered as an issue in that proceeding.

ISSUE 2

ITT Worldcom is strongly opposed to the suggestion that it be required to offer private line service "directly to the premises of...[its] gateway city customer." At the present time ITT Worldcom orders such facilities on behalf of its private line customers between their premises and ITT Worldcom's various "gateway" operating centers from Bell System Operating Companies. The result of this practice is that ITT Worldcom's private line customers pay exactly the charge for these interconnection facilities that is specified in the appropriate Bell System tariff. If ITT Worldcom were obliged to provide service directly to its customers' premises, it would be obliged to amend its present tariff to establish some type of average rate

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14/ C.f. GTE Satellite Corp. 49 F.C.C. 2d 42, 55 (1974).

for these facilities.[15/] This would result in some of ITT Worldcom's private line customers paying more for these interconnection facilities than they presently pay and others less than they presently pay, since ITT Worldcom would in effect be obliged to make a fixed charge for a variable facility. Moreover, furnishing of these facilities by ITT Worldcom would, of necessity, require ITT Worldcom to include in the calculation of its "costs" general administrative and overhead charges which its customers do not presently bear. Additionally, ITT Worldcom would be required to pay large and totally unnecessary sums to the Commission in the form of tariff page filing fees, since ITT Worldcom would be required to revise its tariff constantly so that it coincided with the tariff of the Bell operating company from which ITT Worldcom acquired these facilities. There would be no added convenience to ITT Worldcom's customers in the arrangement suggested by Issue 2 since ITT Worldcom's customers normally request ITT Worldcom to obtain interconnection facilities on their behalf from Bell Operating Companies at the time they order overseas facilities from ITT Worldcom.

[15/] Section 61.74 of the Commission's Rules and Regulations would prevent a cross-reference to the appropriate section of a Bell System Company tariff with respect to these charges.

CONCLUSION

For the reasons above stated, ITT Worldcom requests the Commission to permit it to continue to acquire the subject interconnection facilities pursuant to the existing contract between AT&T and ITT Worldcom. ITT Worldcom also urges the Commission not to require international record carriers to provide private line facilities directly to its customer's premises, instead of ordering these facilities on its customer's behalf from the appropriate Bell system operating company.

Respectfully submitted,

ITT World Communications Inc.

By

Joseph J. Jacobs

Its Attorney
67 Broad Street
New York, NY 10004

Dated: June 23, 1975

CERTIFICATE OF SERVICE

I, Kathleen E. Smith, certify that I have this 23rd day of June, 1975 sent a copy of the foregoing "Comments" by United States mail, first class postage prepaid, to the following:

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Chief, Common Carrier Bureau
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Washington, D.C. 20554

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Kathleen E Smith
Kathleen E. Smith

✓086

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

Interconnection Facilities Provided to the International Record Carriers	)))	Docket No. 20452

COMMENTS

RCA Global Communications, Inc. (RCA Globcom) hereby submits its comments in the above-captioned proceeding pursuant to the Commission's Memorandum Opinion and Order (the Order) released on May 7, 1975.

1. In the Order, the Commission has requested comments on two issues. The first issue is whether the Commission should order American Telephone and Telegraph Company (AT&T) to provide facilities to international record carriers (IRCs) between the IRCs' operating offices and their overseas facilities (earth stations and cable heads) (entrance facilities) and between and among their operating offices (e.g., New York and San Francisco) (inter-gateway facilities) pursuant to filed tariffs rather than pursuant to currently effective contracts. The second issue is whether it is in the public interest for the IRCs to continue their current practice of requiring their gateway city private line customers to obtain, direct from the local telephone company, facilities between the customer's premises and the IRC's operating office.

II. ENTRANCE FACILITIES AND FACILITIES BETWEEN GATEWAY CITIES

2. In the Order, the Commission noted that the entrance facilities and the inter-gateway city facilities are now provided by AT&T to the IRCs under contract rather than pursuant to tariff. The Commission further noted, however, that similar facilities supplied to domestic satellite common carriers are tariffed and that interconnection facilities provided to the IRCs within the gateway cities are also subject to tariff. In setting forth the basis for the inquiry into this issue, the Commission stated:

> It appears to us that there is no significant difference between the interconnection facilities provided to the IRCs and those provided under tariff to the specialized common carriers including domestic satellite common carriers. We therefore believe that a substantial question exists as to whether we should order AT&T to provide these facilities pursuant to filed tariffs rather than pursuant to contracts.[1]

3. As an initial matter, the Communications Act of 1934 as amended, (the Act)does not create a distinction between contracts and tariffs as means for one carrier to provide facilities to other carriers. Sections 201 through 211 of the Act and the rules promulgated thereunder set forth certain standards governing the contents of tariffs, the procedures under which tariffs are to be regulated by the Commission, and the criteria

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[1] Memorandum Opinion and Order adopted on April 23, 1975 in Docket No. 20452, Para. 1.

by which carriers are to provide services and facilities pursuant to tariffs. However, Sections 201(b) and 211 of the Act recognize both tariffs and carrier-to-carrier agreements as acceptable methods for one carrier to provide facilities to another carrier. Thus, as a matter of law, there is nothing in the Communications Act which treats contracts as a method less desirable than contracts for providing facilities to carriers.[2] On the contrary, the Act specifically recognizes carrier-to-carrier contracts and provides for their regulation.

4. Not only are contracts, by statute, as acceptable as tariffs, but also FCC policy has recognized and approved contracts as constituting an acceptable method for the provision of facilities to other carriers. For instance, in a proceeding concerning the supplementing of terrestrial connecting facilities in Hawaii for use with overseas circuits, the Commission specifically rejected the contention of an IRC that use of the facilities must be granted to that IRC only on an indefeasible right of user (IRU) basis. The Commission found, instead, that certain of its past decisions requiring IRUs were based on the particular circumstances involved. In the instant case, the Commission found that access to the facilities by lease would be suitable, thereby treating the method of a

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[2] See also Brief for Respondents in Opposition, pp. 10-11, American Telephone & Telegraph Co. v. FCC, U.S. No. 74-1229, October Term 1974.

carrier-to-carrier contract as being at least as acceptable as tariffs and IRUs.[3] In addition, in considering the establishment of entrance facilities from the INTELSAT earth stations in Alaska and Pureto Rico, the Commission had received applications which contemplated access to the facilities either by contract or by the grant of indefeasible rights of user (IRUs). In both cases, the Commission found IRUs to be the preferable vehicle, but it is significant that the Commission limited its consideration to the devices applied for, contracts and IRUs. Apparently, tariffs were not so preferable as to impel the Commission even to consider them, let alone mandate their use.[4] Finally, the Commission initially preferred contracts as the method for AT&T to provide interconnection and local distribution facilities to the new specialized common carriers (SCCs),[5] and, in the Commission's policies adopted for domestic satellite common carriers (DSCCs), the Commission provided that contracts were one of several acceptable alternatives for the provision of interconnection and local distribution facilities to the new DSCCs.[6]

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[3] See Memorandum Opinion, Order and Authorization released on March 14, 1974 in File Nos. P-C-8338 and P-C-8338-A.

[4] See Communications Satellite Corporation, 23 FCC 2d 850 (1970); All America Cables and Radio, Inc., 15 FCC 2d 1 (1968).

[5] Specialized Common Carrier Services, 29 FCC 2d 870, 940 (1971).

[6] See e.g., Domestic Communications Satellite Facilities, 38 FCC 2d 665, 698 (1972); 34 FCC 2d 844, 856 (1972); 34 FCC 2d 1, 66 (1972); 22 FCC 2d 86, 96-97 (1970).

5. Thus, contracts are sanctioned in the Act and Commission policy has found contracts to be appropriate in particular circumstances in which both entrance facilities and local distribution facilities are involved. In addition, there is no apparent basis either to change this policy generally or to apply a different policy governing the particular method by which the IRCs obtain from AT&T entrance facilities and inter-gateway city facilities. From the beginning, the provision of these facilities pursuant to contract has worked smoothly and without controversy. The original contracts from the cable heads to the gateway cities were negotiated in the late 1940's. When the international satellite system began operations in 1965, the establishment and provision of entrance facilities by AT&T for the satellite earth stations were expeditiously concluded through carrier-to-carrier agreement. And when the matter of facilities for other common carriers (OCCs) was broadly and comprehensively treated in late 1974 and early 1975 in a series of intensive negotiations between AT&T and the OCCs, including the IRCs, the parties to those negotiations were able to agree that no change was needed in the arrangements by which AT&T provides entrance facilities and inter-gateway city facilities to the IRCs.[7]

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[7] See Paragraph 5 of the Settlement Agreement, attached to the Commission's Decision in Docket 20099 released May 7, 1975. (Offer of Facilities for Use by Other Common Carriers, FCC 75-450).

6. As noted above, the Commission stated in the Order that the SCCs and the DSCCs obtain by tariff facilities from AT&T for interconnection and local distribution facilities and that "there is no significant difference" between those facilities obtained by the OCCs pursuant to tariff and the entrance and local distribution facilities obtained by the IRCs pursuant to contract. However, this does not form an adequate basis for replacing the IRC contracts with tariffs. First, there is no showing that the provision of interconnection facilities to the IRCs has been in any way unsatisfactory of itself. Second, while in some cases there may well be no significant difference between OCC facilities generally and IRC facilities, there is a significant difference between the circumstances under which the IRCs on the one hand and the DSCCs and SCCs on the other hand obtain their facilities.

7. The DSCCs and SCCs obtain facilities from AT&T in order to provide services which are in direct competition with services provided by AT&T. Further, as the Commission has found,[8] these competing OCCs are substantially dependent in the short run on AT&T for the interconnection and local distribution facilities which these OCCs require if they are to have the early capability to provide end-to-end service Thus, because of the competitive situation, the Commission apparently has found a need for a greater

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[8] See e.g., *Domestic Communication Satellite Facilities*, 34 FCC 2d, 844, 856 (1972); 34 FCC 2d 1, 66 (1972); 22 FCC 2d 86, 97 (1970); *Specialized Common Carrier Services*, 24 FCC 2d 318, 347 (1970).

degree of regulatory involvement and therefore has found in this particular case, independent justification for preferring tariffs as the method for one carrier to provide facilities to other carriers. Thus, the Commission's initial domestic satellite policy[9] favoring contracts was modified and AT&T was ordered to file tariffs for the provision of facilities to the DSCCs.[10] However, this modification of policy took place only after a full consideration of specific relevant factors that supported the conclusion that tariffs rather than contracts would achieve the Commission's objective that these facilities were to be made available to the satellite carriers under reasonable and non-discriminatory conditions.

8. With respect to IRC facilities, however, the circumstances are different. Most importantly, the IRCs do not compete with AT&T in providing their international communications services. Over the years, the IRCs and AT&T have worked out, within the framework of the currently effective contract arrangements, a cooperative relationship which has resulted in procedures and operating arrangements for the provision of through service in a most highly efficient manner. There is no reason to believe that this cooperative relationship will not continue, nor is there any reason to believe that this relationship could be improved upon or even equalled by resort to tariffs.

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[9] Set note 6 above.

[10] Memorandum Opinion, Order and Authorization adopted September 12, 1973 in File Nos. 25-DSE-P-71, etc., para. 19.

9. In sum, there has been no showing that the provision of facilities for the IRCs by AT&T pursuant to contract has been, in practice, in any way objectionable to the IRCs nor has there been a showing that this arrangement has been in any way detrimental to the public interest. Further, the circumstances under which AT&T provides facilities to the IRCs pursuant to contract are substantially different from the circumstances under which the Commission has required AT&T to provide facilities to the OCCs pursuant to tariff. Finally, to require a shift from a contract to a tariff for the provision of facilities to the IRCs could disrupt the cooperative operational arrangements which have evolved under the currently effective agreements for the efficient provision of international record communications services. For these reasons, RCA Globcom believes that the Commission should not, as a matter of policy, order AT&T to provide interconnection facilities pursuant to tariffs rather than pursuant to contracts.

10. Even if the Commission were to find, however, that carrier-to-carrier contracts were in some way unacceptable, RCA Globcom believes that IRUs, rather than tariffs, are a preferable alternative. The Commission has approved IRUs as a policy matter under similar circumstances,[11] and this mechanism provides the

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[11] All America Cables and Radio, Inc. 15 FCC 2d 1, 14 (1968).

greater involvement of the IRC in assuring the proper provision and operation of the facilities.

II. CONNECTING FACILITIES WITHIN GATEWAY CITIES

11. The second issue which the Commission has raised in this proceeding concerns "whether it is in the public interest for the IRCs to require their gateway city private line customers to obtain, directly from the local telephone company, facilities between the customer's premises and the IRC's operating office."[12] As with the first issue, there is no apparent rationale which would justify a change from the arrangements currently used to provide service. The Commission does observe that:

> The IRCs offer telex service from overseas points directly to their customers' premises. Similarly, the domestic specialized and satellite common carriers offer their services directly to their customers' premises. However, the IRCs offer international private line...service only between overseas points and their gateway city operating offices.[13]

12. However, the mere fact that services in other circumstances are provided in a certain fashion does not therefore

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[12] Paragraph 2, Memorandum Opinion and Order released May 7, 1975 in Docket No. 20452. There is a possible question related to the appropriateness of proceeding herein by comments. The second issue in this proceeding can be looked on as a requirement by the Commission that a carrier provide a service; under Section 205 of the Act, the appropriate procedure would be an investigation and hearing.

[13] Paragraph 2, Memorandum Opinion and Order released May 7, 1975 in Docket No. 20452.

mean that all services should be provided in the same fashion absent some showing that the method of providing the present method is in some way objectionable or that a shift to the proposed method would produce some substantial identifiable advantage. RCA Globcom does not perceive any substantial advantage in shifting to the proposed new arrangement. In addition, there does not appear to have been any complaints about the arrangements used at present. On the contrary, the Commission has, in the very recent past, impliedly approved the practice of a customer obtaining local distribution facilities by requiring that AT&T and the Associated Bell System Companies file tariffs offering local distribution service directly to customers.[14] This requirement, by the Commission's own assertion,[15] is an effectuation of its stated policy in Specialized Common Carrier Services, 29 FCC 2d 870 (1971). Therefore, since no reason has been advanced why international private line services provided by the IRCs should be offered in any manner different from the manner now utilized, and since the manner now utilized has been specifically approved by the Commission for similar types of service, there is no justification for the Commission to order a change at this time.

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[14] Paragraphs 27 and 34 of Memorandum Opinion and Order released May 7, 1975 in FCC Docket No. 20099.

[15] Paragraph 27 of Memorandum Opinion and order released May 7, 1975 in FCC Docket No. 20099.

Respectfully submitted,

RCA GLOBCOM COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Denis J. Brion

Its Attorneys
2030 M Street, N.W.
Washington, D. C. 20036

June 23, 1975

CERTIFICATE OF SERVICE

I, Lili Holcombe, hereby certify that a copy of the foregoing COMMENTS was served this 23rd day of June, 1975 by United States mail, postage prepaid, to the following:

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s/ Lili Holcombe

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LAW DEPARTMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452 file
Provided to the International)
Record Carriers.

COMMENTS OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby submits its comments in response to the Commission's Memorandum Opinion and Order (the "Order") released May 7, 1975 in the above-captioned proceeding.

1. The Commission's Order requested comments from the international record carriers (IRCs) and the American Telephone and Telegraph Company (AT&T) regarding two aspects of the manner in which AT&T provides certain interconnection facilities to the IRCs for use in the provision of their international record services. These two aspects of AT&T/IRC interconnection may be briefly summarized as follows:

(i) the manner in which AT&T provides certain facilities to the IRCs between the IRCs' operating centers and their overseas facilities (earth stations/cable heads) and between and among their operating offices;

(ii) the manner in which AT&T provides certain gateway loop facilities directly to the IRCs international private line customers to interconnect such customers' premises to the IRCs operating centers.

2. With respect to the foregoing classifications of facilities the Commission has asked for opinions on the following specific issues:

> "(1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts; and
>
> (2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers." (Order, para. 3).

3. In summary, WUI submits that the public interest and convenience has been, and will continue to be, best served by retention of the two distinct long-standing industry practices that are the subject of the Commission's inquiry in this proceeding. Because of the diverse nature of the facilities involved in each issue of this inquiry, as well as the distinct and unrelated considerations related thereto, WUI will address its comements separatly as to each issue.

The Public Interest Is Best Served By Continuation Of the Existing AT&T/IRC Contracts For Entrance and Intercity Facilities.

4. The Commission's Order notes that entrance and intercity facilities are provided to the IRCs pursuant to contract while "similar facilities provided to domestic satellite common carriers...are tariffed".* Additionally,

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*Order, para. 1.

"interconnection facilities provided to the IRCs by AT&T within the gateway cities are also subject to tariff".* Citing these distinctions, the Commission goes on to state that since it appears that "no significant difference"** exists in the several facilities, AT&T should be ordered to terminate its contracts with the IRCs and provide such facilities via tariff.

5. Provision of facilities by one carrier to another pursuant to contract is a long accepted practice. Section 211(a) of the Communications Act of 1934, as amended, (the "Act") specifically requires that every carrier subject to the Act "file with the Commission copies of all contracts...in relation to any traffic affected by the provisions of this Act to which it may be a party".*** The WUI/AT&T contract, dated May 9, 1968, has been so duly filed. Further, Section 203(c) of the Act requires every carrier to file with the Commission its tariffs governing all jurisdictional communications services "*unless otherwise provided by or under the authority of this Act*.****

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* Order, para. 1.

** Id.

*** U.S.C. 47 §211(a).

**** U.S.C. 47 §203(c) (emphasis added).

6. Clearly, therefore, there exists a careful statutory scheme whereby carriers may elect, pursuant to the interrelated sections of the Act above quoted, to provide services to each other in one of two ways: (a) by a tariff pursuant to Section 203, governing services to the public, and (b) by contract pursuant to Section 211. The Commission in the instant proceeding appears to be attempting to dictate to the contracting carriers the manner in which the subject service is to be provided, thereby eliminating that very choice granted to the carriers under Sections 203 and 211 of the Act.

7. The action which the Commission apparently seeks to take in the instant proceeding is an abrogation of WUI's contract rights. The Supreme Court has held that the abrogation of such private contracts may be undertaken by an administrative agency only where such action can be clearly demonstrated to serve the public interest.* Nor may the contract be abrogated by one of the parties merely by the filing of a tariff covering the services in question.**

8. The Commission's Order is utterly devoid of any public interest considerations favoring the replacement

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* FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

** United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956).

of the existing IRC/AT&T contracts for entrance and intercity facilities with a tariff. To the contrary, the following considerations clearly establish that abrogation of the existing contracts will not serve the public interest:

(a) In the international record communications industry, the connecting landline circuitry obtained pursuant to the contracts in question is merely ancillary to the international cable and satellite paths. As will be further developed hereinbelow, the existing facilities contracts are arrangements negotiated in lieu of granting to the IRCs indefeasible right of use (IRU) interests in the subject facilities -- facilities which are a mere extension of, in some cases, international cables in which the IRCs own such IRUs. Accordingly, the subject contracts are an inherent part of the long-standing submarine cable and satellite earth station consortia of the IRCs and AT&T, totally distinct from the domestic telecommunications industry.* It is only in the latter industry, with the advent of new competition for AT&T, from domestic satellite and specialized common carriers that the Commission has heretofore taken exception to the long-standing practice whereby contractual relationships govern the provision of facilities by one common carrier to another. The particular public interest considerations often cited by the Commission for its desire to replace such intercarrier contracts with tariffs in the domestic communications industry -- that is, the finding that tariffs would more likely assure AT&T's emerging competitors with access, on non-discriminatory terms and conditions, to the essential facilities of AT&T -- are not present in the case of the IRCs, whose industry (with minimal exception) does not compete with AT&T, and who have developed over the years a mutually satisfactory working relationship with that carrier.

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*In fact, the IRC/AT&T contracts at issue here resulted in the voluntary withdrawal, for the time being, of the IRCs' demand for indefeasible right of use interests in the subject facilities. At the time of execution of its contract with AT&T, WUI specifically noted such contract was without prejudice to WUI's right to later reassert its IRU demands. (Letter of Robert E. Conn, then Vice President, to Ben F. Waple, December 2, 1968). WUI hereinbelow does, in fact, reassert its right to IRUs in the facilities here at issue.

(b) The abrogation by the Commission of the IRC/AT&T contracts may have serious repercussions in the delicate relationships between the U.S. communications industry and foreign telecommunications entities. As previously noted by WUI,* its own facilities contract with AT&T relates specifically to facilities provided to such foreign entities (¶3(d), for example). In addition, any abrogation of WUI's contract might impact upon the foreign entities through operation of the several TAT cable construction agreements (¶5(a)(b), TAT-6 Agreement, May 2, 1973, for example).

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*Letter of Robert E. Conn, Executive Vice President, to Walter R. Hinchman, June 19, 1974.

(c) To the extent that the present mutually satisfactory* IRC/AT&T contracts are replaced by tariffs, such new offerings are likely to be less attractive and more onerous, from a financial and operational point of view. Such additional costs, arbitrarily imposed upon the IRCs by the Commission, must ultimately be borne by the rate-paying public. The Commission is respectfully urged to avoid placing such an unnecessary additional financial burden upon the international record communications industry which has heretofore developed an unparalleled history of rate reductions and resistance to the considerable pull of world-wide inflation.

The Commission Should Order AT&T To Make Entrance and Intercity Facilities Available To the International Record Carriers On An Indefeasible Right Of User Basis Under Fair and Equitable Terms.

9. As a joint licensee in several international cables and a joint owner of several earth stations WUI has a continual need to acquire and utilize connecting domestic circuitry to access such facilities from its gateway operating offices. Further, WUI has an affirmative obligation to its rate-paying public to obtain such facilities by the most economical means consistent with sound business planning.

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*See letter of T. W. Scandlyn, Assistant Vice President of AT&T, to Walter R. Hinchman, June 26, 1974.

Acquisition of transoceanic facilities on a capital investment basis -- the most economical means available to WUI -- has facilitated the downward trend in international rates. The public interest will be further served by permitting WUI to acquire its connecting terrestrial circuitry on a similar capital investment basis. Accordingly, WUI submits that if the Commission sees fit to abrogate the existing IRC/AT&T facilities contracts, the IRCs must be permitted to acquire such facilities by indefeasible right of use interest.

10. The Commission has already recognized the benefits inherent in allowing carriers to obtain ownership interests in facilities:

> "We also understand their evident desire to maximize investment as a basis for the opportunity to earn a fair return on capital devoted to public service.... We find that the most logical and equitable formula is one under which ownership is reasonably related to use. Any major departure from this principal would, in essence, mean that a carrier, ready, willing and able to pay for facilities which it actually requires to handle traffic would be required to lease them from a second carrier. The sole function of the second carrier would be that of the investor in facilities on which such second carrier would realize a return at the expense of the first-carrier user." (Second Report and Order on Ownership and Operation of Earth Stations, 5 F.C.C. 2d 812, 818-819).

Elsewhere, the Commission has stated its belief that "the IRU concept is a practical and reasonable method of relating ownership to use where facilities are to be used by more than one carrier..." and that "... common carriers should own the facilities they use to serve the public unless there is some advantage in utilizing the facilities of another carrier or other entity, such as economy, efficiency, spectrum conservation, etc."* WUI submits that no such countervailing circumstances exist with respect to the instant facilities. Accordingly, the public interest and convenience will best be served by a Commission directive that AT&T make available to the IRCs indefeasible right of use interests in such facilities in accordance with the above cited Commission decisions.

Retention of The Existing International Private Line Tariff to IRC Gateway Operating Centers Is In the Public Interest.

11. A second aspect of the Commission's inquiry in the above-captioned proceeding relates to the manner in which the IRCs tariff their international private line service. Under existing international private line tariffs (WUI's Tariff F.C.C. No. 4, for example) service is provided to

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*All American Cables and Radio, Inc., et al, 15 F.C.C. 2d 1, 14.

the customer from the carrier's operating center and the customer obtains a connecting "local loop" between his office and the operating center directly from the local telephone company. The Commission has noted that such a tariffing arrangement differs from

(a) international telex, where the IRCs' tariffs provides for service to the customer's office; and

(b) private line services of domestic specialized and satellite common carriers, which are offered to the customer's office.

12. The Commission's Order is silent as to the reasons it is apparently now questioning, after many years of consistent rate reductions, the manner in which the IRCs tariff their private line service. In questioning the dissimilarity in the IRCs' provision of local loops for private line customers as opposed to telex customers, the Commission appears to be urging consistency for the sake of consistency, despite the fact that it is dealing with two wholly distinct and dissimilar services.

13. International telex service is a teleprinter exchange switched service. The customer obtains access into the international telex network via the switching capabilities of the IRC. What is offered is basically not a discrete facility or "pipe", but a switching service. The international

private line or "leased facility"* tariffs, on the other hand, consist of furnishing the particular facility on a contract basis between specified customer terminals.

14. Charging for international telex service is based upon usage. The cost of local loops, enabling customers to access the IRC telex switch, is factored into the overall cost of providing the service and is thereby ultimately reflected in the rate charged to the customer. The cost of each individual local telex loop, while varying somewhat with distance in the gateway city, is relatively uniform. The opposite is true for private line loops, the cost of which may vary significantly with the grade of conditioning and line speed required. Accordingly, any effort to build the "average" local loop cost for private line service into the various private line rates (in a manner equivalent to international telex) would result in considerable discrimination against low speed, minimum conditioned users.

15. No unlawful, unjust or unreasonable discrimination exists by virtue of the fact that international telex customers obtain local loops as an integral part of that service, while international private line customers obtain their own local loops from the local telephone company. Even in the case of telegraph-grade service,

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*WUI Tariff F.C.C. No. 4, S1.01.

the IRCs' cost-per-local loop is greater for private line loops than for telex loops. This is because the similarity in operational specifications of telex loops enables the IRC to obtain economies of scale in telex loops not available in the case of private line loops. For example, the specific and clearly defined telex interface specification has enabled WUI to bundle telex loops at a strategic location in the New York gateway so as to reduce the overall cost of providing telex loops. Other locations are planned for similar economies in the near future. The relatively large number of telex loops (as opposed to private line) and the uniformity of their operation, enable WUI to undertake such bundling on a dedicated telex TDM basis. On the other hand, the enormous variety in private line speeds and conditioning specifications does not lend itself to inclusion in the basic telex bundling scheme.

16. In further support of the relative economy of telex loops is the fact that future Bell System plans for local distribution facilities call for the eventual replacement of all DC circuits with pure analog circuits. Standard, less costly modems have been developed for telex service via such circuits. Private line customers, on the other hand, will be forced to use far more costly traditional modems.

17. It is clear from the foregoing that the distinctions between the IRCs' telex and private line

treatment of local loops is fully justified by the following:

(a) wholly distinct service offerings involved;

(b) telex loop costs are relatively uniform while private line loops vary enormously depending upon speed of service and required conditioning;

(c) cost of private line loops (on per loop basis) is considerably in excess of telex loops.

18. WUI's foregoing justification of its telex and private line tariffs with respect to local loops is without prejudice, however, to its position that the Commission is without authority to require WUI to offer its private line service directly to the premises of its gateway customer. No statutorily proscribed discrimination or preference exists in this regard, nor are such proscriptions even hinted at by the Commission's Order. Commission desire, for the sake of consistency,* to align international private line tariffs with those in the domestic sphere, cannot replace the careful statutory plan (Sections 203-205) of carrier-initiated tariffs.

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*It must be noted that the practical distinction between obtaining an international private line and a domestic private line is nugatory: in each case the customer receives a separate identifiable charge for his international or interexchange facility, as well as a separate identifiable charge for his local loop.

WHEREFORE, for the reasons set forth herein, WUI respectfully submits that neither (a) the IRC/AT&T entrance and intercity facility contracts, nor (b) the IRCs' present private line tariffs to their respective operating centers, should be changed or amended except that in the case of the said facilities contracts the Commission is hereby requested to grant to the IRCs, in lieu thereof, indefeasible right of use interests in such entrance and intercity facilities.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Robert Michelson
Attorney

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June 23, 1975

CERTIFICATE OF SERVICE

I, Mary Chin, do hereby certify that a copy of the foregoing Comments of Western Union International, Inc., has been sent by United States mail, postage prepaid to the following:

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/s/ Mary Chin

June 23, 1975

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LAW DEPARTMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

COMMENTS OF
TRT TELECOMMUNICATIONS CORPORATION

TRT Telecommunications Corporation (TRT) hereby respectfully submits its comments on the two issues designated by the Commission's Memorandum Opinion and Order, released May 7, 1975 (FCC 75-451).

(1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts;

The intercity facilities between the gateway city operating centers of the international record carriers (IRC's), on the one hand, and the cable heads and earth stations, on the other hand, have traditionally been provided pursuant to contractual arrangements between AT&T and the IRC's. Such contractual arrangements over the years have been satisfactory to AT&T and the IRC's and have resulted in the provision of reliable and flexible facilities for international record communications services. Moreover, since inter-carrier contracts are specifically recognized in the Communications Act and their validity has been acknowledged by the Commission, there can be no question of the appropriateness of such agreements between AT&T and the IRC's as a legally permissible method of assuring adequate facilities for the provision of international services to the public.

The Commission now appears to question whether these beneficial contractual arrangements should continue, principally because AT&T supplies apparently similar "entrance" facilities to domestic satellite common carriers under tariff rather than contract. However, we submit that such "entrance" facilities are provided to domestic satellite carriers under significantly different circumstances.

The domestic satellite carriers provide domestic specialized services in direct competition with AT&T. The Commission therefore determined that it should require AT&T to provide "entrance" facilities to these carriers under tariff to assure that adequate facilities would be provided by AT&T and that AT&T would not discriminate to the advantage of its own services or among its competitors. On the other hand, with a few minor exceptions, AT&T does not compete with the IRC's. In the many years that the contractual arrangements between AT&T and the IRC's have been in existence, there have been no instances where AT&T has discriminated among the IRC's. Thus, in the case of the AT&T/IRC's facility leases, there is no need for the Commission to require the extra assurance against discrimination that would be provided by a tariff offering.

Moreover, the facilities provided under these contractual arrangements are extensions of overseas cable and earth station facilities which are owned jointly by AT&T and the IRC's. Since the use of the overseas facilities are regulated under contract, there would appear to be no reason to require a tariff offering regulating the use of the domestic extensions of such overseas facilities.

> (2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers.

In response to this issue, at the outset it should be noted that the IRC's do not own any local distribution facilities in the gateway cities and there has been no suggestion that the IRC's should construct duplicative local distribution facilities for the provision of international services. Thus, whether or not local channels for International Leased Channel Service are tariffed by the IRC's, such channels will have to be acquired from the local telephone companies in the gateway cities or from The Western Union Telegraph Company (Western Union).

The Commission apparently questions whether the IRC's should be required to tariff the local gateway city channels connecting to international leased channels provided by the IRC's because local channels are tariffed by domestic specialized carriers and because the IRC's provide telex as a through service to their gateway city subscribers.

These situations are distinguishable, however. The specialized carriers are required to tariff their offerings as through services in order to compete with the domestic specialized service offerings of AT&T and Western Union. There is no similar competitive requirement for International Leased Channel Service. International Leased Channel Service has traditionally been tariffed as an end-on-end service rather than as a joint through service.

This allows each of the carriers providing service to the customer, i.e., the U.S. domestic carrier, the U.S. international carrier and the foreign carriers, to set its own rates in accordance with its revenue requirements. This structure has proven to be the most practical for International Leased Channel Service in light of its characteristics. Thus, in International Leased Channel Service, the customer, for fixed monthly charges, is provided with the use of dedicated facilities between the United States and a foreign point.

In International Telex Service, on the other hand, dedicated international facilities are not provided for the customer's use. Rather, the customer on an occasional or demand basis is furnished with a temporary connection to any of the stations on the telex networks of the IRC's foreign correspondents. As a practical matter, International Telex Service must be tariffed as a through service. Accordingly, such through tariffing of International Telex Service provides no basis for requiring the through tariffing of the dissimilar International Leased Channel Service.

WHEREFORE, TRT respectfully submits that the Commission should not require the IRC's to obtain entrance and intercity facilities from AT&T pursuant to tariff rather than contracts and the Commission should not require the IRC's to offer international private line service directly to the premises of the carriers' gateway city customers.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

Roderick A. Mette

Roderick A. Mette
Its Attorney

June 23, 1975

CERTIFICATE OF SERVICE

I, Cynthia A. Martell, hereby certify that a copy of the foregoing "COMMENTS" has been served this 23rd day of June, 1975 by United States mail, postage prepaid, to the following:

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Cynthia A. Martell
Cynthia A. Martell

June 23, 1975

File : Facilities Agreement Inquiry
Docket 20452

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

PETITION TO BROADEN THE SCOPE

COMSAT General Corporation ("COMSAT General") hereby petitions the Commission to broaden the scope of the investigation instituted by Memorandum Opinion and Order, released May 7, 1975, in the above-captioned proceeding to ensure that all MARISAT carriers be considered and treated equally as regards interconnection arrangements related to the operation and use of the MARISAT system. Also, we request that COMSAT General be added as a Party Respondent herein for the purpose of participating in this proceeding, as broadened.

In support of this petition, COMSAT General advances the following grounds:

1. By the afore-referenced Order, an investigation was instituted into, inter alia:

> "whether the Commission should require the international record carriers to obtain entrance facilities (from both cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts ...."*

2. Encompassed in the scope of the Commission's inquiry are issues dealing with interconnection facilities which will be used by ITT, RCA and WUI in connection with the provision of their respective MARISAT services. Given this fact--and aside from the administrative convenience which would result from resolving interlinked issues together--we believe that contemporaneous consideration of the overall MARISAT facets involved in the subject proceeding should be undertaken so that the Commission can ensure that the MARISAT carriers will be afforded access to entrance and other interconnection facilities on an evenhanded basis. Such treatment is clearly consistent with Sections 201 and 202(a) of the Communications Act.

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* AT&T and the international voice/record carriers, including three MARISAT joint applicants (ITT World Communications Inc. ("ITT"), RCA Global Communications, Inc. ("RCA") and Western Union International, Inc. ("WUI")) were named as Parties Respondents in the proceeding.

WHEREFORE, COMSAT General respectfully requests the Commission to grant this Petition to Broaden the Scope and to add COMSAT General as a Party Respondent in the above-captioned proceeding.

Respectfully submitted,

COMSAT GENERAL CORPORATION

By William D. English
William D. English

Warren Y. Zeger
Warren Y. Zeger

June 26, 1975

Its Attorneys
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CERTIFICATE OF SERVICE

I, Betty M. Glazer, hereby certify that a copy of the foregoing "Petition To Broaden The Scope" was served this 26 day of June, 1975, by United States mail, postage prepaid, to the following:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

REPLY COMMENTS

American Telephone and Telegraph Company (AT&T) respectfully submits the following Reply Comments in the above-entitled proceeding:

1. The international record carriers (IRCs) uniformly support the conclusion that the entrance facilities which AT&T provides to the IRCs from cable heads and earth stations to the IRCs' operating centers in gateway cities take into account the discrete needs of the IRCs and warrant a continuation of the existing contractual arrangements. As AT&T has pointed out in its Comments and in its June 26, 1974 letter* concerning the same question, the longstanding contractual arrangements between AT&T and each of the IRCs are mutually satisfactory. The IRCs' Comments confirm that fact.

2. As pointed out by Western Union International, Inc. (Comments, p. 6), if the Commission requires the use of tariffs for the provision of facilities to the IRCs, it may well have significant impact on the relationships between

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* Letter of Mr. T. W. Scandlyn to Mr. W. R. Hinchman, dated June 26, 1974.

United States carriers and foreign telecommunications entities which transit the United States if these entities are also required to obtain transiting facilities under tariff. It is not unlikely that these foreign administrations, particularly those which are members of the European Conference of Posts and Telecommunications Administrations (CEPT), might increase the charges to AT&T and other United States carriers for transiting facilities overseas. The Commission is inquiring into the arrangements between United States carriers and foreign entities in a separate proceeding (Docket No. 19031), and the Commission should not take any action in this proceeding which will cause an adverse impact on the charges paid by United States carriers for the substantial numbers of facilities they use overseas.

3. Several IRCs have suggested that if the Commission determines that the present contractual arrangements no longer serve the public interest, AT&T should make available to them indefeasible right of use (IRU) in the entrance facilities they require as an alternative to obtaining their facilities from AT&T pursuant to tariff. Such an arrangement is not at issue in this proceeding. It involves a multiplicity of complex legal and operational considerations which the parties have not had an opportunity to address herein. The Commission in this proceeding has given no indication or notice of any desire to burden its consideration of the specified issue with comments on wholly unrelated issues dealing with the wisdom

or propriety of requiring carriers to convey ownership interests in their property to others.

4. As to the second issue designated by the Commission for investigation in this proceeding, i.e., whether the IRCs should be required to offer international private line service directly to their customers' premises in gateway cities, AT&T is of the view that IRCs should have end-to-end service responsibility for their international private line customers and notes that facilities are available to the IRCs in gateway cities under Bell System local distribution facilities' tariffs between IRC operating centers and customer premises.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/ Alfred C. Partoll
Alfred C. Partoll

By /s/ Harry A. Davenport
Harry A. Davenport

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By /s/ Mary S. Lenard
Mary S. Lenard

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Its Attorneys

July 8, 1975

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I hereby certify that the foregoing Reply Comments was served this 8th day of July, 1975, by mailing copies thereof by United States mail, postage prepaid, to the following persons:

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/s/ John T. Egan
John T. Egan

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

REPLY

RCA Global Communications, Inc. (RCA Globcom) hereby submits its reply in the above-captioned proceeding pursuant to the Commission's Memorandum Opinion and Order released on May 7, 1975 as modified by its Order released on June 11, 1975.

1. The first of the two issues which are the subject of this inquiry relates to whether American Telephone and Telegraph Company (AT&T) should provide entrance facilities and facilities between gateway cities to the international record carriers (IRCs) pursuant to tariff rather than pursuant to the contracts which are now in effect. RCA Globcom notes that each party filing comments in this proceeding has stated that the contracts now in effect have worked well. Indeed, the existing contracts have provided a highly suitable basis for the effective and efficient provision of the IRCs' services. In the absence of any complaint concerning these contracts, in view of the statutory recognition of contracts as a proper means for the provision of facilities by one carrier to another,

in view of consistent Commission policy supporting the use of contracts under these circumstances, and in the absence of any showing in the record in this proceeding that any benefit to the public would result from a change from contracts to tariffs, it is clear that the Commission should, as a matter of policy, allow the currently effective contracts to continue.

2. However, if the Commission should decide that the existing contracts are not an appropriate basis for the provision of facilities to the IRCs, then, in accordance with the Commission's policy set forth All America Cables and Radio, Inc., 15 FCC 2d 1 (1968), the IRCs should be permitted to obtain indefeasible rights of user (IRUs) in the entrance facilities and intercity facilities now being provided by AT&T under contract. Because of the economic benefits of IRUs to the IRCs and to their customers and because IRUs would afford to the IRCs a greater operational role, IRUs are far preferable to tariffs as an alternative to contracts.

3. The second issue in this inquiry is whether the IRCs should be allowed to continue to require their gateway city private line customers to obtain, directly from the local telephone company, facilities between the customers' premises and the IRCs' operating offices. AT&T, in its comments herein, states that "it is unaware of any reason why the IRCs

should not be required to furnish under tariff international private line service directly to their customers' premises in gateway cities."[1] However, as pointed out in the comments of TRT Telecommunications Corp. (TRT),[2] the IRCs do not own any local distribution facilities in the gateway cities, and there are substantial practical and economic obstacles to the construction of such facilities by the IRCs. Thus, if the change suggested by the Commission were made, it would do nothing more than require the IRCs to obtain from AT&T and pass on to their customers that which the customers are now obtaining in a satisfactory manner directly from AT&T.

4. The more relevant question is whether there is any reason to require a change from contracts to tariffs for the provision of these local distribution facilities. As discussed above, there would be no advantage to such a change. In addition, the record herein is still bereft of any showing that the present arrangement is unsatisfactory. Further, it is the recently-affirmed policy of the Commission that customers be able to obtain local distribution facilities directly from AT&T.[3] For these reasons, there is no justification for the Commission to require any change in the manner

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[1] Comments of AT&T, dated June 23, 1975, at para. 3

[2] Comments of TRT, dated June 23, 1975, at p. 3.

[3] See Paragraph 27 of Memorandum Opinion and Order released May 7, 1975 in Docket No. 20099.

in which international service is provided by the IRCs to private line customers in the gateway cities.

WHEREFORE, RCA Globcom respectfully submits that the Commission should not require the IRCs to obtain entrance and intercity facilities from AT&T pursuant to tariff rather than contracts, and the Commission should not require the IRCs to offer international private line service directly to the premises of the IRCs' gateway city customer.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Denis J. Brion

Its Attorneys
2030 M Street, N.W.
Washington, D. C. 20036

July 8, 1975

CERTIFICATE OF SERVICE

I, Lynda Clark, hereby certify that a copy of the foregoing REPLY was served this 8th day of July, 1975 by United States mail, postage prepaid, to the following:

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Daniel J. Harrold, Esq.
Common Carrier Bureau
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One WUI Plaza
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s/ Lynda Clark

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file

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Interconnection Facilities Provided to the International Record Carriers.) Docket No. 20452

REPLY OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) respectfully submits its Reply to Comments filed in the above-captioned proceeding by RCA Global Communications, Inc. (RCA), ITT World Communications Inc. (ITT), TRT Telecommunications Corporation (TRT) and American Telephone and Telegraph Company (AT&T).

1. It was the unanimous opinion of all carriers involved that the existing contracts for entrance and intercity facilities between the international record carriers (IRCs) and AT&T have been satisfactory to the parties and have been a significant factor in the IRCs' enviable record of providing high quality communications services at inflation-resistant rates.

2. Notwithstanding the adequacy of the subject facilities contracts, the Commission is respectfully reminded that these contracts were negotiated among the

parties to serve temporarily in lieu of a more equitable acquisition arrangement -- specifically, indefeasible right of use (IRU) interests by the IRCs in the subject facilities. As noted in several of the comments submitted in this proceeding, the Commission itself has indicated its preference that ownership of facilities be reasonably related to use.

3. Accordingly, WUI again urges the Commission to take appropriate action looking to a grant to WUI, in lieu of the subject facilities contracts, of IRU interests in the entrance and intercity facilities at issue in order to minimize operating expenses. WUI notes that its own plans involve consideration of construction of its own facilities for certain international high-density routes such as New York/Greenhill cable station or New York/Etam earth station unless relief in the form of IRUs in existing circuitry can be obtained. Shared ownership in existing facilities would conserve funds and radio frequency spectrum. Absent IRU grants, WUI has no choice but to consider construction of separate facilities -- indeed common carriers have an obligation "to be economical" in the expenditure of their funds, and thus to minimize operating expenses. The Western Union Telegraph Co., 25 FCC 535, 562 (1958).

4. As a final consideration, WUI submits that, as a practical matter, Commission review and analysis of

specific industry practices can often be expedited and clarified by means of conferences among interested parties, including Commission staff personnel. Such forums are most conducive to exploration of related problems and their potential solutions -- witness the Commission's recent commendable efforts at the successful settlement of the many difficult interconnection issues contained in Docket No. 20099. A similar, well prepared meeting, in WUI's view, would be a more appropriate vehicle for an exchange of ideas and resolution of potential industry problems or practices than the type of formalized, rigid proceeding necessitated herein by the Commission's May 7, 1975 Memorandum Opinion and Order -- an Order which hints at fait accompli and appears to relegate the interested carriers to the relatively ineffective posture of petitioning, afterwards, for reconsideration of an adverse decision. Such a procedure simply guarantees a flood of defensive, often hyperbolic pleadings rather than what is really needed -- a frank, informal, and well prepared exchange of views and information by all concerned.

5. WUI has previously called for such a meeting regarding the matters at issue herein prior to the institution of this formal docket. If the Commission still deems

some action appropriate with respect to the matters at issue an industry/FCC conference would appear to be highly beneficial.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Robert Michelson
Attorney

One WUI Plaza
New York, New York 10004

July 8, 1975

CERTIFICATE OF SERVICE

I, Mary Chin, do hereby certify that a copy of the foregoing Reply of Western Union International, Inc., has been sent by United States mail, postage prepaid to the following:

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RCA Global Communications, Inc.
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TRT Telecommunications Corporation
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

/s/ Mary Chin

July 8, 1975

File: → Facilities Agreement
Comsat: Dkt. 20452

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Interconnection Facilities Provided to the International Record Carriers	)	Docket No. 20452

To: The Commission

OPPOSITION

American Telephone and Telegraph Company (AT&T), pursuant to § 1.45(a) of the Commission's Rules and Regulations, hereby opposes the Petition to Broaden the Scope (Petition) filed herein by COMSAT General Corporation (Comsat General) on June 26, 1975. In support of its Opposition, AT&T respectfully shows:

1. In its Petition (p. 1), Comsat General requests the Commission to designate it a Party Respondent herein and to enlarge the scope of the proceeding to include "consideration of the overall MARISAT facets involved" in order "to ensure that all MARISAT carriers be considered and treated equally as regards interconnection arrangements." The Petition is untimely, omits any showing of good cause for its late filing, and fails to demonstrate why the Commission should delay the prompt resolution of the specific issues in this proceeding by consideration of the unspecified concerns of Comsat General. Accordingly, the Petition should be denied.

2. The Commission's Memorandum Opinion and Order herein (Order), released on May 7, 1975, set for investigation two specific issues, viz., the matter of provision of facilities to International Record Carriers (IRCs) and the provision of private line services offered in gateway cities by IRCs. Interested persons were authorized to participate by filing comments on or before June 12, 1975, later extended to June 23, 1975.* Comsat General neither petitioned to intervene in timely fashion** nor filed Comments in the time or manner authorized by the Commission. Thus, the Petition is unauthorized and untimely, and should not be entertained.

3. Even assuming that Comsat General had raised its unspecified concerns in timely fashion, it is obvious that the subject of MARISAT connection is at best only remotely related to the issues designated herein. Comsat General has not even attempted to show how the matters interrelate but merely relies on the general commonality of parties as purported justification for enlarging the scope of this proceeding far beyond its specified bounds. Moreover, Comsat General has not shown or even alleged

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* See Order released June 11, 1975 (Mimeo No. 51382).

** FCC Rules and Regulations, §1.223 generally requires a Petition to Intervene be filed 30 days from the date the matter is set for hearing.

that suitable connections for MARISAT services are not available and that Commission action is required.

4. It is apparent that broadening the issues in this proceeding to deal with Comsat General's unspecified concerns regarding MARISAT connection will unnecessarily complicate and unduly delay resolution of the designated issues.

WHEREFORE, AT&T requests that Comsat General's Petition be denied.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/ Alfred C. Partoll
Alfred C. Partoll

By /s/ H. A. Davenport
H. A. Davenport

Its Attorneys
195 Broadway
New York, New York 10007

By /s/ Alfred G. Walton
Alfred G. Walton

Its Attorney
32 Avenue of the Americas
New York, New York 10013

July 9, 1975

CERTIFICATE OF SERVICE

I, John T. Egan, hereby certify that a copy of the foregoing "Opposition" was served this 9th day of June, 1975, by United States mail, postage prepaid, to the following:

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Thomas J. O'Reilly, Esq.
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/s/ John T. Egan
John T. Egan

File: Facilities Agreement
Opposing Dkt. 20452

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)

Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

OPPOSITION

RCA Global Communications, Inc. (RCA Globcom) hereby opposes the Petition to Broaden the Scope filed in this proceeding on June 26, 1975 by COMSAT General Corporation (COMSAT General). In support of this Opposition, RCA Globcom submits these considerations:

1. This proceeding was initiated by the Commission by its Memorandum Opinion and Order released on May 7, 1975. In this Order, the Commission set forth two specific issues for inquiry:

a. whether the Commission should order American Telephone and Telegraph Co. (AT&T) to provide interconnection facilities to the international record carriers (IRCs) pursuant to filed tariffs rather than pursuant to existing contracts; and

b. whether it is in the public interest for the IRCs to require their gateway city private line customers to obtain directly from the local telephone company, facilities between the customer's premises and the IRC's operating office.

2. COMSAT General, in its petition, seeks to broaden the scope of this inquiry in order "to ensure that all MARISAT carriers be considered and treated equally as regards interconnection arrangements related to the operation and use of the MARISAT system." 1/ COMSAT General supports this petition on the grounds that "administrative convenience . . . would result from resolving interlinked issues together," 2/ and that the Commission should "ensure that the MARISAT carriers will be afforded access to entrance and other interconnection facilities on an evenhanded basis. Such treatment is clearly consistent with Sections 201 and 202(a) of the Communications Act." 3/

3. It is not clear from COMSAT General's petition exactly what interconnection arrangements are of specific concern. If COMSAT General is concerned about its ability to obtain interconnection facilities between specific MARISAT earth stations and its operating offices or customers' premises, COMSAT General has ignored the fact that facilities suitable for such use are available under the several OCC Facility Tariffs filed with the Commission by the AT&T Operating Companies. These tariffs were recently substantially modified in order to make available an expanded range of facilities to other common carriers. 4/ COMSAT

1/ Petition of COMSAT General to Broaden Scope, dated June 26, 1975, at p. 1.

2/ Id. at p. 2.

3/ Id.

4/ See the Commission's Decision in Docket No. 20099, released May 7, 1975 (Offer of Facilities for Use by Other Common Carriers, FCC 74-450).

General has not alleged that these tariff are in any way inadequate for such uses or that these tariffs do not provide "equal treatment" or an "evenhanded basis" for obtaining facilities. Thus, because of the existence of these tariffs and the absence of any claim by COMSAT General that the tariffs are inadequate, there is no basis for an issue to be raised whether the Commission should take positive steps at this time to insure for COMSAT General "evenhanded access" to interconnection facilities.

4. But even if these tariffs were in some way inadequate, the matter of interconnection facilities from the MARISAT earth stations is totally irrelevant to the matters at issue in this proceeding. This proceeding deals only with international record carrier services, which are a matter totally different from MARISAT services. In addition, there are only two issues set for inquiry in this proceeding. The first issue deals with certain existing contracts which concern only interconnection facilities for IRC services, and the second issue deals only with the manner in which local loops are provided for certain of these IRC services. Thus, little administrative convenience would result from attempting to resolve together issues which are not in any way interlinked.

5. If, on the other hand, COMSAT General is concerned about the interconnection of its MARISAT services with various IRC services, then, as COMSAT General seems to recognize in its petition, this is a matter to be resolved either by agreement between COMSAT General and the IRCs, or failing that, under Section 201 of the Communications Act as an interconnection of services matter. Such an issue dealing with interconnection of services is different both from the first issue in this proceeding dealing with the inter-carrier leasing of

facilities, and from the second issue dealing with the manner in which customers of carrier services obtain local loops for those services. In any event, the issue of the interconnection of MARISAT services with IRC services is already being dealt with exhaustively in another proceeding. 5/ Thus, no administrative convenience would result by interjecting this same issue into a completely separate proceeding.

WHEREFORE, for the reasons set forth above, RCA Globcom respectfully submits that the public interest would be served by a denial of COMSAT General's Petition to Broaden the Scope of this proceeding.

Respectfully submitted,

RCA GLOBCOM COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Denis J. Brion

Its Attorneys
2030 M Street, N.W.
Washington, D.C. 20036

July 9, 1975

5/ See the Memorandum Opinion and Order released on May 5, 1975 in File Nos. 17-CSS-P-(3)-73, etc., and the various subsequent pleadings submitted in this file.

CERTIFICATE OF SERVICE

I, Lynda Clark, hereby certify that a copy of the foregoing OPPOSITION was served this 9th day of July, 1975 by United States Mail, postage prepaid, to the following:

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s/ Lynda Clark

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July 17, 1975

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Mullins:

By Memorandum, Opinion and Order, released May 7, 1975, in Docket No. 20452 (FCC 75-451), the Commission invited comments from interested parties on the questions of:

> (1) Whether the international record carriers should be required to obtain entrance and intercity facilities from AT&T pursuant to tariff rather than contract, and
>
> (2) Whether the international record carriers should be required to offer international private line services directly to the premises of their gateway subscribers.

Comments on these questions were filed by AT&T and the affected IRC's, including ITT World Communications Inc. (ITT Worldcom). In general, all of the respondents urged that the facilities provided by American Telephone & Telegraph Company (AT&T) to the IRC's should continue to be provided pursuant to contract. Although reply comments were permitted, ITT Worldcom determined not to file any reply because of the unanimity of position among the respondents on the principle issue in this proceeding.

Mr. Vincent J. Mullins
Page Two
July 17, 1975

However, a Petition To Broaden The Scope of this proceeding filed by Comsat General Corporation (Comsat General) has recently come to our attention. Rather than seeking permission from the Commission to file an Opposition to that Petition at this time, we note that Oppositions have been filed by RCA Global Communications, Inc. (RCA) and by AT&T and ask that the record herein reflect that ITT Worldcom is basically in agreement with the views expressed in those Oppositions and wishes to be associated with the positions taken thereby.

It would seem clear that Comsat General, having no authority to operate as an international record carrier nor to directly serve customers in the gateway cities,* can only be interested in the manner that it achieves interconnection with one or more of the IRC's for the extension of its MARISAT services. It can have no legitimate interest in the manner in which those IRC's effectuate the connection from their operating centers to their overseas circuits or their gateway subscribers. The MARISAT interconnection question is already the subject of Commission action in connection with its Memorandum Opinion and Order, released May 5, 1975, addressed to the applications for MARISAT operating authority, File Nos. 17-CSS-P-(3)-73, _et al_ (FCC 75-502), and Petitions for Reconsideration of that Order. To attempt to engraft the matters raised in connection with that proceeding upon the matters at issue in the instant proceeding would offer no recognizable benefit and result in a host of unnecessary administrative complications.

Very truly yours,

Joseph J. Jacobs

JJJ/ks

cc: All parties - Docket No. 20452
Comsat General Corporation

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* See letter dated February 25, 1975 from the Chief, Common Carrier Bureau to John A. Johnson, President, Comsat General Corporation, FCC Reference No. 9110.

Before the [illegible]
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities)
Provided to the Interna-) Docket No. 20452
tional Record Carriers)

REPLY

COMSAT General Corporation ("COMSAT General"), pursuant to Section 1.45 of the Commission's Rules, hereby replies to the Oppositions filed on July 9, 1975 by American Telephone and Telegraph Company ("AT&T") and RCA Global Communications, Inc. ("RCA") against COMSAT General's Petition To Broaden the Scope ("Petition") of the investigation instituted by Memorandum Opinion and Order ("Order"), released May 7, 1975, in the above-captioned proceeding.

1. In the Order the Commission opened a rulemaking proceeding to investigate, inter alia, "whether the Commission should require international record carriers to obtain entrance facilities...from AT&T pursuant to tariffs rather than contracts...." AT&T and five IRCs, including ITT World Communications Inc. ("ITT"), RCA and Western Union International, Inc. ("WUI"), which are also prospective MARISAT carriers, were named as Parties Respondents.

2. On June 28, 1975, COMSAT General petitioned the Commission to broaden the scope of the subject inquiry to include the basis on which AT&T will provide interconnection facilities for record purposes to COMSAT General as a MARISAT carrier. The purpose of our Petition is to ensure that concurrent consideration will be given to these closely interlinked issues, with the view that COMSAT General will be afforded access to such AT&T facilities on terms and conditions no less favorable than those available to ITT, RCA and WUI.

3. Of the six carriers named as Parties Respondents herein only AT&T and RCA have opposed COMSAT General's Petition. AT&T contends that the Petition should be denied on the principal grounds that it was filed three days late and that it raises an issue "at best only remotely related"* to the Commission's investigation. RCA also contends that the Petition should be denied for the reason that it raises an issue "totally irrelevant"** to the investigation. In addition, RCA alleges that the Petition lacks basis for Commission action because COMSAT General may be able to obtain interconnection facilities under the OCC Facility Tariffs filed by the AT&T operating companies.*** As will be shown hereinafter, the contentions of AT&T and RCA are without merit.

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* AT&T's Opposition, p. 2.

** RCA's Opposition, p. 3.

*** *Id.*, p. 2.

4. AT&T argues that the Commission should not entertain the Petition because COMSAT General neither complied with the filing deadline set forth in the Order for the submission of "comments" nor complied with the filing requirements set forth in Section 1.223 of the Commission's Rules for intervention in "hearings."* COMSAT General submits that a careful review of the Order and the Commission's Rules will demonstrate that COMSAT General's Petition was not untimely.

5. In the Order the Commission afforded interested parties an opportunity to file "comments" on the issues designated for investigation therein by June 12, 1975, later extended to June 23, 1975. COMSAT General filed a petition to add an issue to the proceeding, not "comments" on the designated issues. Therefore, the June 23 deadline has no application to COMSAT General's pleading. Moreover, since this proceeding is a "restricted rule making proceeding"** of the kind not required by law to be made pursuant to an evidentiary hearing, the Commission's Rules clearly provide that Section 1.223, dealing with interventions in hearings, as well as the other sections

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* AT&T's Opposition, p. 2.
** See Paragraph 6 of the Order.

of Subpart B of Part 1 of the Rules covering hearing proceedings in general, also have no application to COMSAT General's Petition.* Thus, contrary to AT&T's position, the Rules do not lay down formal procedures establishing filing requirements for "petitions to broaden the scope" submitted in restricted rule-making proceedings. In the absence of formal procedures, we submit COMSAT General's Petition is not subject to dismissal due to lateness and should be entertained by the Commission under Sections 1.41 and 1.1 of the Rules.**

6. Furthermore, AT&T has not contended that either it or the public interest has been prejudiced as a result of the alleged untimeliness of the Petition. Without a showing of even minimal adverse impact, the Commission should not be obstructed from taking cognizance of COMSAT General's pleading.

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* See Sections 1.201 and 1.417 of the Commission's Rules. It follows that Section 1.229, dealing with motions to enlarge hearing issues, is also inapplicable to this proceeding.

** See *e.g.*, *Charles W. Jobber*, 3 RR 2d 302 (FCC 1964). Section 1.41 provides *inter alia*: "Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally ...." Section 1.1 provides, *inter alia*: "The Commission may ..., on petition of any interested party, hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter .... Procedures to be followed by the Commission shall, unless specifically prescribed in this part, be such as in the opinion of the Commission will best serve the purposes of such proceeding."

7. Both AT&T and RCA assert that the [illegible] presented in [illegible] Petition is not sufficiently related to the issues e[illegible]d by the Commission's investigation to warrant concurre[illegible] solution. This proposition is not persuasive. The thrust of the Commission's investigation is to determine the basis on which AT&T will provide interconnection facilities to the IRCs. COMSAT General's Petition requests that the Commission broaden this investigation to determine as well the basis on which AT&T will provide similar interconnection facilities to us. The interrelationship of these issues is plain when it is recognized that terrestrial land lines covered by this investigation will be supplied by AT&T to ITT, RCA and WUI, that those lines presumably will be used by these carriers in the provision of their respective MARISAT services, and that COMSAT General will have to acquire from AT&T similar terrestrial land lines for use in the provision of our competing MARISAT record services. We submit there is no reasonable basis to differentiate between these situations, and AT&T and RCA have not advanced a single substantive ground which militates against concurrent Commission consideration of these parallel issues.

8. RCA's contention that suitable interconnection facilities are available to COMSAT General under the OCC Facility Tariffs brings into focus the considerations

of equity that are associated with COMSAT General Petition. Application of the OCC Facility Tariff to COMSAT General would increase our costs for entrance facilities significantly above the rates payable by RCA and the other IRCs under presently existing carrier-to-carrier arrangements with AT&T. Pursuant to the tariff COMSAT General would be charged approximately $130 per month per voice grade circuit between the MARISAT earth station at Southbury, Connecticut and New York City, whereas the competing MARISAT carriers would be charged, pursuant to contract, less than $70 per month for the same circuit between the same points. This disparity in rates is accentuated with respect to a voice grade circuit between the MARISAT earth station at Santa Paula, California and New York City. Under tariff, COMSAT General would be subject to a monthly charge of approximately $2,300 for such a circuit, whereas under contract competing MARISAT carriers would be charged approximately $1,200 for the same facility. COMSAT General submits that such a disparity cannot be squared with Sections 201 and 202 of the Commmunications Act. Accordingly, the Commission should consider concurrently the basis on which entrance facilities are to be made available to COMSAT General, as well as to ITT, RCA and WUI, in order to ensure that all carriers competing for MARISAT record traffic enjoy the same terms and conditions with respect to the necessary AT&T interconnection facilities.

9. Further, the orderliness and expeditiousness of the Commission's procedures would be promoted by treatment in this proceeding of the issue raised in COMSAT General's Petition. The Commission has been presented on numerous occasions with the necessity to determine the basis on which interconnection facilities should be offered to various segments of the communications industry. Postponement of such a determination with respect to COMSAT General in this instance could simply necessitate a separate proceeding at a later date. The public interest would clearly be ill served by such a needless duplication of the Commission's processes.

WHEREFORE, COMSAT General respectfully requests the Commission to grant the said Petition.

Respectfully submitted,

COMSAT GENERAL CORPORATION

By
F. Thomas Tuttle

Warren Y. Zeger

Its Attorneys
950 L'Enfant Plaza, S. W.
Washington, D. C. 20[illegible]

July 21, 1975

CERTIFICATE OF SERVICE

I, B. Louise Stellabotta, hereby certify that a copy of the foregoing "Reply" was served this 21st day of July, 1975, by United States mail, postage prepaid, to the following:

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September 17, 1976

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: Provision of Entrance Facilities to
the International Record Carriers -
FCC Docket No. 20452

Dear Mr. Mullins:

As the Commission is aware, American Telephone and Telegraph Company (AT&T) has for some time furnished the international record carriers (IRCs) with circuits between their gateway operating centers, on the one hand, and several border crossing points, cable heads and Intelsat System earth stations, on the other hand. These AT&T-provided circuits are used by the IRCs in providing service to foreign locations and U.S. overseas points, including Hawaii. Such circuits, which are sometimes termed "entrance facilities", are furnished under contract rather than pursuant to tariff - - an arrangement that is currently under investigation in the above-captioned proceeding.

The purpose of this letter is to advise you that AT&T will furnish to the IRCs, under contract, entrance facilities between the AT&T owned earth stations in the newly operational AT&T/GSAT Domestic Satellite System and the IRC gateway cities of New York, Washington, San Francisco, Miami and New Orleans for use by the IRCs in providing U.S.

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Mainland/Hawaii services. This is intended to be an interim arrangement and will be subject to review and appropriate modification should there be any significant change in circumstances, such as: the issuance of a decision in FCC Docket No. 20452; AT&T's filing of revisions to its Facilities for Other Common Carriers Tariff; or a material change in the nature of carriers and services in the U.S. Mainland/Hawaii market.

Very truly yours,

c.c. H. A. White (ITT Worldcom)
F. J. DeRosa (RCA Globcom)
R. E. Conn (WUI)
D. H. Lubetzky (TRT)
J. A. Berenger (French Cable)

Common Carrier, Interconnection, Carrier To Carrier
International Carrier, Tariffs

Common Carrier's provision of entrance and intercity facilities to international record carriers on different terms and conditions than are provided to other carriers held to be unlawfully discriminatory. Carrier must provide facilities according to tariff.

F.C.C. 77-176

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of INTERCONNECTION FACILITIES PROVIDED TO THE INTERNATIONAL RECORD CARRIERS	Docket No. 20452

FINAL DECISION AND ORDER

(Adopted: March 8, 1977; Released: March 23, 1977)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT.

Introduction

1. We here consider the two issues designated for hearing in the above-captioned matter:

(1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T [the American Telephone and Telegraph Company] pursuant to tariffs rather than contracts; and
(2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carrier's gateway city customers.

52 FCC 2d 1014, 1015.

I. *Background*

2. In our Memorandum Opinion and Order terminating Docket No. 20099, 52 FCC 2d 727, 735 (1975), we noted that facilities used to connect the international record carriers' (IRCs) operating offices in gateway cities to their earth stations and cable heads (entrance facilities), and to their offices in other gateway cities (intercity facilities), are provided by AT&T to the IRCs by contract rather than pursuant to tariff. Each of the IRCs has an individual contract with AT&T for these facilities but all contain identical terms. This is so even though the same kind of entrance and intercity facilities are supplied by AT&T to specialized (SCC) and domestic satellite (DSCC) common carriers pursuant to tariff, as are certain interconnection facilities pro-

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vided to the IRCs within the gateway cities.[1] The AT&T-IRC contracts were executed in 1968 and outline the terms and conditions of the leasing of the circuits, run from month-to-month, require ninety days' notice for termination by either party and contain an appendant rate schedule for the facilities concerned.[2] We note generally that the contract terms and conditions applicable to Bell's provision of the subject facilities, including charges, differ from those set forth in the applicable Bell tariff for the same kinds of facilities offered to domestic carriers.

3. The Settlement Agreement executed by the parties in Docket No. 20099 preserved the AT&T-IRC contracts while offering the same kind of facilities to the SCCs and DSCCs pursuant to tariff. In our Memorandum Opinion and Order accepting the Settlement Agreement as a disposition without prejudice we noted that "[w]e still believe that a substantial question exists as to whether we should order AT&T to provide these facilities pursuant to filed tariffs rather than pursuant to contracts, and we will take appropriate action on this matter in a separate order." 52 FCC 2d 727, 735 (1975). We further stated that

> "[s]ince the IRCs offer international private line (sometimes referred to as 'leased channel') service only between their gateway city operating offices and overseas points, we will also examine the question of whether it is in the public interest for the IRCs to require their gateway city private line customers to obtain, directly from the local telephone company, facilities between the customers' premises and the IRCs operating office."

Id. Therefore, we instituted this restricted rulemaking to examine the two issues.

4. Comments and/or reply comments on the above issues were filed by AT&T, RCA Global Communications, Inc. (RCA Globcom), ITT World Communications Inc. (ITT Worldcom), TRT Telecommunications, Inc. (TRT), Western Union International, Inc. (WUI), Carpenter Radio Company (Carpenter) and the Hawaiian Telephone Company (HTC). COMSAT General Corporation (COMSAT General) petitioned for a broadening of the scope of the inquiry to include issues concerning the provision of interconnection facilities by AT&T to the MARISAT carriers (COMSAT General, ITT Worldcom, RCA Globcom and WUI). AT&T and RCA Globcom opposed COMSAT General's petition on the basis of lack of relevance and untimeliness. The two issues which are the subject of this investigation present separate and distinct considerations and therefore will be discussed seriatim.

II. *Whether the IRCs Should Be Required to Obtain Entrance and Intercity Facilities Pursuant to Tariff Rather than Contract*

A. Contentions of the Parties

5. In support of their position that the individual contracts should be left in force the carriers argue that the IRCs and AT&T have ex-

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[1] *Bell System Tariff Offerings*, Docket No. 19896, 46 FCC 2d 413 (1974), *aff'd*, *Bell Telephone Co. of Pennsylvania* v. *FCC*, 503 F.2d 1250 (3rd Cir., 1974), *cert. denied*, 422 U.S. 1026 (1975). Entrance facilities are provided by AT&T in Tariff FCC No. 265 and intercity facilities are provided under AT&T Tariff FCC No. 266.

[2] AT&T, in a September 17, 1976, letter, informed us that these contracts were recently expanded to include AT&T's provision of entrance facilities between the AT&T-owned earth stations in the newly operational AT&T/GSAT domestic satellite system and the IRC gateway cities of New York, Washington, San Francisco, Miami and New Orleans for use by the IRCs in providing U.S. Mainland/Hawaii services.

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pressed unanimous satisfaction with the contractual relationship; that the contracts have facilitated high quality service by the IRCs; that no complaints have been lodged concerning the contractual agreements; that contract has traditionally been the method employed by AT&T in providing facilities to the IRCs; that AT&T has never discriminated against any IRC; and that the IRCs have "unique needs" which warrant special consideration. The IRCs further allege that certain negative consequences would flow from a switch from contract to tariff. They contend that the rates they would pay under a tariff would be higher than the contract rates, necessitating an increase in their charges to the public. Further, the IRCs foresee a threat to the uninterrupted continuance of present service standards if there is a disruption in their relations with AT&T and the foreign carriers. They contend that the latter will charge more for reciprocal services if the IRCs must raise their rates to compensate for higher entrance and intercity facility charges.

6. The IRCs also attempt to distinguish the nature of their relationship with AT&T from the relationship AT&T has with the DSCCs and SCCs. They contend that the Commission properly required AT&T to offer certain interconnection facilities to the DSCCs and SCCs pursuant to tariff because AT&T's position as a domestic competitor of the DSCCs and SCCs poses the threat of unlawful discrimination. But the IRCs argue that since they do not compete with AT&T domestically no threat of unlawful discrimination exists and a tariff is unnecessary. They also contend that in some cases the interconnection facilities provided are extensions of jointly-owned overseas cables and since the jointly-owned cables are governed by contract their extensions should be treated likewise. In the event we find against the contracts, the IRCs request that they be granted indefeasible right of user interests (IRU) in the subject facilities as an alternative to requiring the facilities to be offered to them pursuant to tariff.[3]

7. Finally, the IRCs argue that carrier-to-carrier contracts are recognized by Sections 201, 203 and 211 of the Communications Act of 1934, 47 U.S.C. §§ 201, 203, 211, and the principle of their validity has been acknowledged by this Commission in *Bell System Tariff Offerings, supra*. The IRCs further allege that Section 203(c) is a grant to the carriers of a choice between conducting their business pursuant to contract or tariff. Finally, the IRCs state that we may abrogate contracts only within the parameters set by *F.P.C.* v. *Sierra Pacific Power Company*, 350 U.S. 348 (1956) and *United Gas Pipe Line Company* v. *Mobile Gas Corporation*, 350 U.S. 332 (1956). The IRCs argue that these cases hold that abrogation of private contracts "may be undertaken by an administrative agency only where such action can be clearly demonstrated to serve the public interest." These cases also are said to prohibit abrogation by one of the parties merely by the filing of a tariff covering the services in question. Any change from contract to tariff, it is contended, may be required only after a "full hearing" pursuant to Section 205(a) of the Act.

8. HTC's pleading concerns the fact that in its area of operation HTC provides basically the same entrance facilities to the IRCs as

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[3] AT&T argues that the IRU issue is not presented in this proceeding and requests notice and an opportunity to file an opposition before any decision is made in favor of granting IRUs. We agree with AT&T that IRUs are not in issue herein and thus we do not reach that question.

AT&T provides to the IRCs on the mainland. HTC contends, however, that its situation is uniquely distinguishable from that of AT&T and it thus requires different treatment. The claimed distinctions from the mainland are that HTC serves only one gateway city and thus provides no intercity facilities, that a variety of local facilities exists, such as microwave, coaxial cable and submarine cable, and that some of these HTC facilities are "hardened" for national defense purposes. HTC claims these "factual differences" from the mainland make HTC unique and justify its continued reliance on contracts. Additionally, HTC contends there are legal differences between its position and that of AT&T. Where AT&T is said to have made a public offering of facilities to other common carriers, HTC claims that HTC did not. It contends it has never taken the voluntary action which is the prerequisite to classification of its provision of facilities as a common carrier undertaking. HTC requests that any conclusions reached in this proceeding with respect to the issue of the continued use of individual contracts expressly except HTC.

9. In an abbreviated pleading Carpenter petitions us for an order directing AT&T and the United Telephone Company of Ohio to provide Carpenter with interconnection facilities for the provision of service to customers with portable communications equipment.

10. COMSAT General claims that encompassed by the scope of this inquiry are issues concerning the interconnection facilities to be used by WUI, RCA Globcom and ITT Worldcom in the provision of their respective MARISAT services. COMSAT General argues that the interconnection facilities provided by AT&T to the IRCs pursuant to contract are likely to be used by the IRCs in their provision of MARISAT services while COMSAT General will have to acquire similar interconnection facilities for use in its competing MARISAT services pursuant to tariff. This is said to create a potential disparity in rates charged by AT&T to competing MARISAT carriers for the same facilities in violation of Sections 201(b) and 202(a) of the Communications Act. COMSAT General requests that in the course of resolving the issues herein, we remove this potential inequity.

B. Discussion

11. We shall first dispose of procedural matters. The petitions of Carpenter and HTC are not relevant to this proceeding and will not be considered herein. Commission Rule 1.425, 47 C.F.R. § 1.425, states that this Commission will consider all "relevant" comments before taking action. The pleading submitted by Carpenter, however, is not even remotely related to the subject matter of this inquiry. HTC requests that it not be required to provide the interconnection facilities discussed herein to the IRCs pursuant to tariff rather than contract. But it is clear from the Designation Order in this docket, 52 FCC 2d 1014 (1975), that the provision of certain interconnection facilities to the IRCs and other common carriers *by AT&T* is at issue here, not the provision of such facilities by HTC. Therefore, HTC's request is not properly before us in this proceeding. Accordingly, we find that these pleadings lack relevance and therefore, without making any determination on the merits of either Carpenter's or HTC's claims, we find this to be an improper proceeding for consideration of their pleadings.

12. Even though COMSAT General's petition was untimely, we will consider it herein since the concern which prompted its filing, that continuation of the contracts would give the IRCs an unfair competitive advantage over COMSAT General in providing MARISAT services, is relevant and of decisional significance. The participating carriers in the MARISAT consortium are or will be competing head-to-head in the provision of commercial services to maritime customers. We find that COMSAT General and its MARISAT commercial customers may be disadvantaged by AT&T's provision of intercity and entrance facilities to COMSAT General's MARISAT competitors, the IRCs, on more favorable terms and conditions, including lower charges. As set forth hereinafter we are requiring AT&T to eliminate this inequitable treatment of certain carriers.

13. The public interest requires the provision of the subject facilities to all entities on the same terms, absent some justification for the difference. We find that the contract terms and the terms of the tariff, while providing similar service, are different and that no justification has been shown for such a difference. We conclude upon consideration of this record that AT&T's continued provision of entrance and intercity facilities to the IRCs on different terms and conditions than they are supplied to the SCCs and DSCCs is an unjustified discrimination in the provision of like communications services in violation of Sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. §§ 201(b), 202(a).

14. The unjustified discrimination is that, under the contracts, AT&T provides the subject facilities to the IRCs on more favorable terms and conditions, including generally lower charges, than it affords the SCCs and DSCCs under tariff.[4] Thus, AT&T is able, under the current circumstances, to charge one rate to those with whom it competes and another to those with whom it does not generally compete. The potential for prolonged unlawful discrimination against DSCCs and SCCs (and thus indirectly their respective customers) is enhanced by the fact that the contracts with the IRCs contain no set termination date. We are not persuaded by AT&T or the IRCs that the provision of the subject facilities to the IRCs is somehow "unique" and justifies their favored treatment. The facilities provided to the IRCs are essentially identical to those provided to COMSAT General, and the DSCCs and SCCs, and the mere fact that the IRCs may connect their facilities to jointly-owned overseas cable or earth station facilities, which may be governed by contract, is irrelevant. We are particularly concerned that the charges to the IRCs may not be compensatory and the IRCs may be recipients of subsidy from other facilities customers of Bell or from Bell's interstate service offerings. Further, we fail to see how the provision of domestic facilities to the IRCs under AT&T tariffs could have any bearing on the IRC relationship with foreign entities.[5]

15. We also disagree with the contention that it is beyond our authority to modify or abrogate the IRC-AT&T contracts. The carriers

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[4] Thus, the issue is not how AT&T treats the various IRCs respectively, but how it treats the IRCs as a group vis-à-vis other carriers including COMSAT General, DSCCs and SCCs.

[5] The IRCs allege that they would be required to increase their charges to the public if they obtain facilities from AT&T under tariff rather than under contract. In the event the IRCs attempt to increase their charges such tariff filings must, of course, be accompanied by economic material supporting the increased charges. 47 C.F.R. § 61.38

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have argued that the Communications Act recognizes and permits carrier-to-carrier contracts[6] and the choice of dealing with other carriers pursuant to tariff or contract is left to the carriers. The relevant references to carrier-to-carrier contracts in Title II of the Communications Act, cited by the parties, are:

> (1) [N]othing in this Act or in any other provision of law shall be construed to prevent a common carrier subject to this Act from entering into or operating under any contract *with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest;* [47 U.S.C. § 201] [Emphasis added.]
>
> (2) No carrier, *unless otherwise provided by or under authority of this Act,* shall engage or participate in [common carrier] communications unless schedules have been filed and published in accordance with the provisions of this Act . . .; [47 U.S.C. § 203] [Emphasis added.]
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> (3) (a) Every carrier subject to this Act shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of this Act, in relation to any traffic affected by the provisions of this Act to which it may be a party.
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> (b) The Commission shall have authority to require the filing of any other contracts of any carriers, and shall also have authority to exempt any carrier. . . . [47 U.S.C. § 211]

We cannot agree that these three provisions deny this Commission the power to modify or abrogate carrier-to-carrier contracts. First, the quoted provision of Section 201 is immaterial because all parties to the instant contracts are subject to the provisions of the Communications Act. Secondly, even if it were applicable Section 201 seems clearly to give us authority to measure any applicable contract against the public interest and nullify or modify those that are found wanting. This is so even though one of the parties to the contract is not subject to our jurisdiction. It would be anomalous for Congress to grant this Commission more power over those contracts than over contracts where both parties are within our jurisdiction. Thirdly, the filing requirement of Section 211 appears to us to imply that we do have the authority to pass on the contracts which must be filed; otherwise the filing requirement would be a meaningless exercise.

16. We have ruled previously that Section 211(a) contemplates our supervision of carrier-to-carrier contracts.

> While Section 211(a) does not specifically invest regulatory authority over the contracts, it is reasonable to conclude that the provision which requires the contracts to be filed confers upon the Commission the authority to determine whether the terms and conditions thereof are consistent with the provisions of the Act.

Bell System Tariff Offerings, 46 F.C.C. 2d 413, 431 (1974). In that decision we also concluded that *United Gas Pipe Line Company* v. *Mobile Gas Corporation, supra,* and *F.P.C.* v. *Sierra Pacific Power Company, supra,* recognized our authority to determine the propriety of the terms and rates of contracts. See 46 F.C.C. 2d at 435. Nor does *Bell Telephone Company of Pennsylvania* v. *F.C.C.*, 503 F.2d 1250 (3d Cir. 1974), hold to the contrary. The court in that case explicitly stated that it did not reach the issue of our power over carrier-to-carrier

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[6] Under existing case law customer-carrier contracts are void and unenforceable. See *e.g., United Video,* 55 FCC 2d 516 (1975); *Midwestern Relay Co.,* 59 FCC 2d 477 (1976); *Southern Pacific Communications Co.,* 59 FCC 2d 1116 (1976).

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contracts.[7] We therefore reiterate our conclusion, stated in *Bell System Tariff Offerings, supra*, that the Communications Act implicitly authorizes us to modify or abrogate carrier-to-carrier contracts as we find is consistent with the public interest. In the instant case, however, it is not necessary for us to order abrogation or modification of the contracts.

17. Accordingly, we shall order AT&T to eliminate the inequitable and unlawfully discriminatory treatment of COMSAT General, DSCCs and SCCs vis-a-vis the IRCs. We have previously held that the most desirable means to insure that facilities of the kind in issue herein are provided to all carriers on reasonable and non-discriminatory terms is by the filing of tariff schedules. See *e.g.*, *Memorandum Opinion, Order and Authorization* (*AT&T Satellite Application*), 42 FCC 2d 654, 659 (1973). If this method is chosen to eliminate the discrimination we expect AT&T Long Lines Department and the Bell System Operating Companies to file such tariff schedules as may be necessary within 30 days of the publication of this Decision in the Federal Register, and on not less than 90 days notice to the public, to remove the continuing discrimination which we have found contravenes the public interests.[8]

III. *Whether the IRCs Should Be Required to Offer International Private Line Services Directly to the Premises of Their Gateway City Customers*

A. Contentions of the Parties

18. The IRCs contend that there would be no consumer benefit in requiring them to offer international private line service on an end-to-end basis within the gateway cities. They argue that since none of the IRCs have local distribution facilities, and it is economically infeasible to build them, they would acquire them from Western Union (WU) or the local telephone company, just as their customers do now. And they argue that since the IRCs normally make the arrangements for their customers to acquire the necessary facilities anyway, there would be no change in the facilities and little change in the way the customer's business is handled. The IRCs argue that since there has been no complaint concerning this existing arrangement and little will be changed by the proposed requirement, insofar as the customer is concerned, there is little or no advantage in imposing the change.

19. While the IRCs see little advantage to their customers in the proposed change, they allege great disadvantage to themselves. They

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[7] 503 F.2d at 1279. We believe the court was correct in stating that the Act permits carriers to provide for the leasing of facilities by contract, as well as by tariff. *Id.* at 1278. This does not mean, however, that we lack authority to modify or abrogate any such contracts if we find them to be contrary to the public interest.

[8] We express no opinion herein regarding what particular tariff regulations, level of tariff charges, etc., AT&T should file to remove its inequitable treatment of carriers. However, we reserve the right to accept, reject, suspend or investigate whatever may be filed. Further, if the rates and conditions vary from those included in tariffs offering similar facilities to COMSAT General, SCCs and DSCCs, we expect such differences to be fully justified with Section 61.38 and other data. In the event facilities are offered to the IRCs on the identical terms and conditions as are given other carriers, we shall waive the Section 61.38 requirement until such time as AT&T files full justification for the various OCC facility offerings. In any event, within 30 days of the publication of this decision in the Federal Register, AT&T and the Bell System Operating Companies shall file a letter with the Commission giving a date certain for the filing of such full justification.

argue that, because Commission Rule 61.74, 47 C.F.R. § 61.74, prohibits the cross-referencing of tariffs, they would have to file their own complete tariffs, including rates based on cost averaging. This they claim would result in rate increases to some customers and decreases to others and would unfairly discriminate against the low-speed, minimum conditioned user. The IRCs also contend that their tariffed rates would have to be increased whenever the local telephone company charges for local distribution facilities, which IRCs would employ in their end-to-end services, were increased. This, they argue, would involve unnecessary paperwork and incur purposeless tariff filing fees.

20. The IRCs also attempt to distinguish international private line service, where they presently do not offer service directly to their customers' premises, from international telex service, where they do offer end-to-end service. The telex loop usage is part of the overall loop usage and the costs therefore are uniform, they argue, while dedicated private line loops vary greatly in cost and an averaged tariff would discriminate against the lower speed services. This is said to result from the inherent difference between a switched service like telex and a private line service using dedicated facilities. The averaged tariff rates would differ significantly from current rates we are told, because even the least expensive private line loop costs more than a telex loop. The IRCs argue that the DSCCs and SCCs offer tariffed end-to-end private line service only because they are forced to by their competitive status vis-a-vis AT&T and WU and, since the IRCs are not so compelled by competitive forces, they contend they should not be viewed in the same way.

21. Additionally, the IRCs advance arguments concerning the power of this Commission to make such an order. It is argued that where no discrimination exists the Communications Act prefers carrier-initiated tariffs—a preference they argue the proposed requirement would negate. They contend such a change in policy requires a showing by this Commission that the present method is objectionable and that the proposed change would produce identifiable benefits in the public interest. The IRCs also argue that the proposed requirement contradicts the Commission policy that AT&T offer the local distribution facilities directly to the IRCs' customers pursuant to tariff.[9]

B. Discussion

22. We find that any advantages to be gained from a requirement that the IRCs offer international private line service directly to the premises of their gateway city customers are either too minor or uncertain to justify our making such a demand on the IRCs. At the time this issue was designated for hearing we anticipated pleadings from current and potential IRC private line customers advocating such an offering. No such pleadings were filed, however, and we therefore conclude that there is no customer demand for the offering. Under the circumstances, we will not order the IRCs to offer private line service directly to their customers' premises.

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[9] See Bell System Operating Companies Tariff FCC No. 3.

IV. *Conclusions*

23. We conclude, after a full consideration of this record, that AT&T shall be required to provide intercity and entrance facilities to the IRCs on the same terms and conditions as it offers those facilities to the SCCs and DSCCs.

24. We further find that the public interest does not, at this time, require that the IRCs offer their customers end-to-end private line service within the gateway cities.

25. Accordingly, IT IS ORDERED, That, pursuant to Sections 4(i), 201-205, 211 and 403 of the Communications Act, 47 U.S.C. § § 154(i), 201-205, 211 and 403, as amended, AT&T Long Lines Department and Bell System Operating Companies shall, within 30 days of the publication of this Decision in the Federal Register, and on not less than 90 days notice to the public if tariffs are filed, remove the unlawful discrimination in the provision of entrance and intercity facilities as between the IRCs and the DSCCs and SCCs.

26. IT IS FURTHER ORDERED, That the petitions for Carpenter and HTC ARE DISMISSED OR OTHERWISE DENIED for the reasons set forth in paragraph 10 and COMSAT General's petition IS GRANTED to the extent indicated herein.

27. IT IS FURTHER ORDERED, That the Secretary shall cause a copy of this Final Decision to be published in the Federal Register; and

28. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities Provided) Docket No. 20452
to the International Record Carriers)

To: The Commission

PETITION FOR EXTENSION OF TIME

American Telephone and Telegraph Company (AT&T), pursuant to Section 1.46 of the Commission's Rules, hereby requests an extension of time from April 25, 1977 to May 27, 1977 within which to comply with the Commission's Final Decision and Order, released March 23, 1977, in this proceeding. In support of this petition, it is respectfully shown as follows:

1. Since receiving the Order, active and intense analyses of the facilities being provided to international record carriers have been pursued by Bell System personnel familiar with the international operations and the provision of facilities under Other Common Carrier tariffs. The threshold conclusion emanating from those analyses is that the complexities involved in furnishing these facilities make it impossible to formulate and implement actions which will comply completely with the Commission's directions

by April 25, 1977. Indeed, despite substantial effort, the difficult process of identifying and classifying all such facilities has not been completed at this time.

2. Some of the actions which will be in order, however, seem to be clearly indicated. Intercity facilities now provided to the international record carriers between their operating centers under lease agreements, for example, should be made available to them pursuant to the existing tariff offerings of facilities to Other Common Carriers. With respect to entrance-type facilities which are also now provided under lease agreements, however, appropriate action to comply with the Commission's directions is not at this time entirely clear. Our efforts to clarify this matter are continuing and involve review of the complex arrangements from various international record carrier operating centers to cable heads, radio antenna sites and earth stations. Our present expectation is that this review will be completed in time so that actions pursuant to the Commission's Order may be taken by May 27, 1977.

WHEREFORE, it is requested that an extension of time to and including May 27, 1977, within which action pursuant to the Commission's Order may be taken, be granted.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/Alfred C. Partoll
Alfred C. Partoll

By /s/Lee S. Cutcliff
Lee S. Cutcliff

By /s/Gerald E. Murray
Gerald E. Murray

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By /s/Edgar Mayfield
Edgar Mayfield

By /s/Alfred G. Walton
Alfred G. Walton

Routes 202-206
Bedminster, New Jersey 07921

Its Attorneys

April 15, 1977

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition For Extension Of Time of American Telephone and Telegraph Company in F.C.C. Docket No. 20452 was served this 15th day of April, 1977, by mailing copies thereof by United States mail, postage prepaid, to the following persons at the addresses shown below:

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/s/John T. Egan
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 25 1977
LAW DEPARTMENT

In the Matter of)
)
Interconnection Facilities Provided) Docket No. 20542
to the International Record Carriers)

To: The Commission

COMMENTS OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) submits its Comments in the above-captioned proceeding in support of the Petition for Extension of Time, dated April 15, 1977, filed herein by American Telephone and Telegraph Company (AT&T):

1. WUI is in accord with the position set forth by AT&T in its petition. Said petition requests an extension of time from April 25, 1977 to May 27, 1977 within which to comply with the Commission's Final Decision and Order herein released March 23, 1977. (Order)

2. Any change in the long-standing 30-year practice of providing ghe subject facilities to the international record carriers by contract is obviously a difficult and complicated process. Due to the difficulties and complexities involved, AT&T should be allowed sufficient time to develop all the information necessary to comply the Commission's Order in a full and fair manner.

3. In addition to the reasons set forth in the AT&T petition, for the granting of this request, an extension of time will enable both the Commission and AT&T to consider the position to be advanced by WUI in its forthcoming petition for reconsideration of the Order.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: April 21, 1977

CERTIFICATE OF SERVICE

I, Diane A. DiNoia, hereby certify that the foregoing Comments of Western Union International, Inc. has been sent by United States mail, postage prepaid to the following:

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/s/ Diane A. DiNoia

Dated: April 21, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 77-273
66332

In the Matter of)
)
Interconnection Facilities Provided) DOCKET NO. 20452
to the International Record Carriers)

ORDER

Adopted: April 20, 1977 ; Released: April 22, 1977

By the Commission:

1. We have before us American Telephone and Telegraph Company's (AT&T) April 15, 1977 Petition for Extension of Time from April 25, 1977 to May 27, 1977 within which to comply with the Commission's Final Decision and Order, FCC 77-176, released March 23, 1977, in the above-captioned proceeding. The Final Decision and Order directed AT&T to remove the unlawful discrimination in the provision of entrance and intercity facilities as between the international record carriers (IRCs) and domestic satellite and specialized common carriers.

2. AT&T states that the complexities involved in furnishing the facilities at issue to the IRCs make it impossible to formulate and implement at this time all the actions which will comply completely with the Commission's directions by April 25, 1977. AT&T indicates that while it has determined that intercity facilities will be provided to IRCs under existing tariff offerings of facilities to Other Common Carriers it has not completed its review of entrance-type facilities so that an appropriate action can be determined. Finally, AT&T states that its efforts to determine all of the actions necessary to comply with the Commission's directive are expected to be completed by May 27, 1977.

3. We have considered the foregoing and conclude that the requested extension of time is reasonable and would not unduly delay implementation of the Commission's order.

4. Accordingly, IT IS ORDERED, That AT&T is granted additional time from April 25, 1977 to May 27, 1977 within which to take actions in compliance with our Final Decision and Order in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

cc: EFM RTA, AHC, [illegible], JCH, [illegible], JS

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RECEIVED
APR 25 1977
LAW DEPARTMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection Facilities Provided to the International Record Carriers.	)	Docket No. 20452
	)	
	)	

To: The Commission

PETITION FOR RECONSIDERATION BY WESTERN UNION INTERNATIONAL INC.

Western Union International, Inc. (WUI), pursuant to Section 405 of the Communications Act of 1934, as amended, and to Section 1.106 of the Commission's Rules, hereby petitions the Commission to reconsider its Final Decision and Order (Order) in this proceeding, released March 23, 1977, insofar as said Order required AT&T to remove the alleged unlawful discrimination in the provision of "entrance" and "intercity" facilities as between the international record carriers (IRCs) and the specialized (SCC) and domestic satellite (DSCC) carriers.

"Entrance" is a misnomer for circuits from cable and satellite stations, which will be hereinafter referred to as "tail" circuits in keeping with industry parlance. "Tail" circuits appropriately describe these appendages of overseas cable and satellite circuits. Similarly, "intercity" circuits between IRC gateway cities are also appendages of overseas circuits because these intercity circuits cannot carry intra-United States traffic, but can only carry traffic originating and/or terminating overseas.

WUI requests the Commission to vacate its Order and thereby allow the IRCs to continue to obtain tail and intercity circuits under lower-cost contracts rather than higher-priced tariffs because:

¶ The obvious bias against the IRCs' position in this case and the prejudgement of the tariff versus contract issues shine forth clearly from prior Commission orders and letters;

¶ The instant Order conceded in its first sentence that the tariff versus contract issue had been "designated for hearing";

¶ Nevertheless, the IRCs were deprived of their expressly requested hearing and conference rights without ever being told why--in violation of basic precepts of regulatory fairness and courtesy;

¶ The Commission by its instant Order has unlawfully prescribed higher tail and intercity circuit rates for the IRCs without according their statutory hearing rights to them;

¶ The Commission has obviously misunderstood the adverse impact of its instant Order upon the foreign telecommunications entities, and the likely reciprocal increase in foreign transiting charges that will impact the U.S. carriers;

¶ The IRCs, who provide essential and vital services, are a separate and distinct classification from the domestic specialized carriers--the IRCs cannot be lumped simplistically into this domestic classificaton;

¶ IRC tail circuits to jointly owned cable and satellite earth stations are not "like services" when compared with intra-United States facilities furnished to domestic specialized carriers--IRCs are not "similarly situated" or in competition with domestic specialized carriers--therefore, lower contract charges for tail circuits to IRCs cannot be unlawfully discriminatory against higher tariff charges to domestic carriers;

¶ IRCs are entitled to IRUs in tail circuits appended to jointly-owned cable and satellite earth stations

The Background

By letter dated June 6, 1974, the Chief, Common Carrier Bureau, instructed AT&T to file appropriate tariffs, within twenty days, to reflect the offering of facilities by AT&T to the IRCs between the IRCs operating offices and their overseas facilities (tail circuits to jointly-owned satellite earth stations and submarine cables) and between and among their operating offices. The letter noted that said facilities were being provided under contract and not pursuant to tariffs.

This contractural relationship between the IRCs and AT&T has worked well for over a generation and had not theretofore been the subject of any controversy.

The IRCs and AT&T objected, in writing, to the above suggestion. AT&T declined to tariff the facilities.* WUI, as well as other of the IRCs, requested an industry meeting to review the matter in depth.** No such meeting was ever convened.

On May 7, 1975, the Commission released a Memorandum Opinion and Order*** which requested comments on the following issue:

> "Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts."

AT&T, French Telegraph Cable Company, ITT World Communications Inc. (ITT), TRT Telecommunications, Inc. (TRT), RCA Global Communications, Inc. (RCA), and WUI were named parties respondent.

Thereafter the above parties filed pleadings in this proceeding. They asked for retention of the contractual arrangements between the IRCs and AT&T. No pleadings were filed in support of the position enunciated by the Chief, Common Carrier Bureau as set forth in his letter of June 6, 1974.

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*Letter dated June 26 1974 from T.W. Scandlyn to Chief, Common Carrier Bureau.

**Letter dated June 19, 1974 from Robert E. Conn to Chief, Common Carrier Bureau. No response was ever received by WUI.

***52 FCC 2d 1014.

The pleadings filed took issue with the Commission position advanced in its May 7, 1975 Order that there was no significant difference between the facilities provided under contract to the IRCs and those provided under tariff to the specialized domestic carriers. It was pointed out that the facilities provided to the IRCs were, in fact, appendages of the various overseas cables and satellites specifically needed by the IRCs, and that these facilities formed a separate classification as distinguished from the facilities used by domestic carriers. The IRCs noted that the contracts at issue were part of the settlement agreement approved by the FCC in Docket 20099. The IRCs contended that the above historical background demonstrates the unique application of the facilities to the IRCs, as distinguished from the domestic carriers. In addition, the IRCs requested IRUs in the facilities in the event that the Commission ruled against the validity of the contracts.

Certain of the parties requested the institution of formal or informal fact finding proceedings. ITT, in its Comments dated June 23, 1975, requested an evidentiary hearing pursuant to Section 205(a) of the Communications Act. AT&T, in its Comments dated June 25, 1975, offered to participate in discussions in light of the significant impact of this matter on the IRCs and their customers. WUI, in its Reply dated July 8, 1975, asked for a joint industry-Commission conference to deal with the issues raised by this proceeding.

As was the case in 1974, the Commission again in 1975 and in 1976 ignored the carriers' requests for hearings, conferences or any other type of fact-finding proceedings.

The Order

The Commission erroneously found that the facilities provided to the IRCs by AT&T were esentially identical to those provided to the DSCCs and SCCs. The fact that the facilities are mere appendages of international cables and satellites was incorrectly deemed irrelevant. Based upon this unfounded predicate, the Commission concluded that facilities provided to the IRCs on different terms and conditions than for the SCCs and DSCCs constituted an unjustified discrimination in violation of Sections 201(b) and 202(a) of the Communications Act.

The Order also concluded that the IRCs' requests for IRUs in the subject facilities were not at issue; and ignored the IRCs' requests for an opportunity to present relevant facts at a hearing or conference.

The Commission ordered AT&T Long Lines Department and the Bell System Operating Companies to remove the alleged unlawful discrimination between the IRCs and the DSCCs and SCCs.

The IRCs Are Wholly Distinct From, And Do Not Compete With, The Domestic Specialized Carriers

In a series of decisions dealing with applications by RCA to construct and operate a domestic satellite system, the Commission has recognized the unique role played by the IRCs. The Commission has stated:

> "RCA Globcom is one of the principal international carriers furnishing worldwide communications services which are essential to the national interests of the United States. It is vital to the public interest that RCA Globcom's capacity to continue in this role not be significantly impaired by the vicissitudes and uncertainties inherent in the domestic communications satellite market."*

The Commission also expressed concern about the proposed domestic satellite venture impinging or burdening, in any respect, the international operations. This recognition of the unique character of the IRCs and the concern for protecting their "essential" international communications which are "vital" to the public interest was reaffirmed by the Commission on November 6, 1975.**

Now, less than two years later, the Commission appears to have reversed course. It now equates the "essential" and "vital" worldwide communications services provided by the IRCs with the narrow (and often luxurious) range of specialized domestic services to large business firms provided by the DSCCs and SCCs. In contrast, the IRCs provide a full range of "essential" and "vital" services to all sizes and types of customers, including public message services to individuals, some of whom cannot even afford a residential telephone.

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*42 FCC 2d 774, at 781. (Emphasis added)

**56 FCC 2d 660, at 665, 667.

This failure to recognize the clear distinction between the IRCs and the domestic specialized carriers is particularly egregious in light of the facilities at issue in this proceeding. Said facilities consist of connecting landline circuitry which is merely ancillary to the international cable and satellite facilities. Accordingly, we are dealing with facilities which are an inherent part of the long-standing submarine cable and satellite earth stations jointly owned by the IRCs and AT&T -- facilities which are totally distinct from those of the relatively new category of specialized domestic carriers.

Thus, the conclusion stated by the Commission in its Order, that no justification exists for different treatment of the IRCs and the domestic carriers, is not supportable. Justification can be found in the "essential" national interests served by the IRCs. Justification can be found in the policy, recognized in the past by the Commission, of protecting the IRCs "vital" international capacity from impairment by any speculative entry by an IRC into the domestic specialized market. Justification can be found in the fact that the facilities at issue are part of the "essential" international communications network. Justification can also be found in the fact that the IRCs are full service carriers serving all segments of the public as contrasted to the domestic carriers specialized non-involvement in message and telex services which are basic to individuals and small business firms.

Accordingly the IRCs should not be lumped simplistically into the SCC/DSCC classification.

No Unjustified Discrimination In The Provision Of Like Communications Services Is Present Herein

Section 202(a) of the Communications Act states; in pertinent part:

> "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly by any means or device, ..."

As set forth above, the facilities provided by AT&T to the IRCs are not in connection with "like communication service" which is furnished by AT&T to the DSCCs and SCCs. The facilities leased to the IRCs are in connection with the conduct of the IRCs' overseas business. These facilities are mere appendages, or tails, to satellite earth stations and submarine cables which are jointly owned by the IRCs and AT&T.

This situation must be contrasted with the intra-United States circuit facilities provided by AT&T to the DSCCs and SCCs. Thus, the finding of discrimination in the Order is contrary to the statutory language and Commission decisions. The Commission has stated that: "Where charges for services are at issue, Section 202 (a) proscribes only unjust or unreasonable discrimination involving substantially similar services."**

Unfortunately the Commission was predisposed to a finding of discrimination. In the Commission Order of May 7, 1975 instituting this investigation, the Commission characterized the facilities furnished to the IRCs as being "similar" to the facilities offered to the domestic specialized common carriers. This predetermined conclusion was carried forward in the Order. The fact that the subject facilities are appendages to jointly owned overseas cables was dismissed as "irrelevant." Contrary to the pleadings, the Commission maintained that the facilities supplied to the IRCs constitute services similar to that supplied by AT&T to the DSCCs and SCCs.

The Finding Of Unjustified Discrimination Is Contrary To The Law

Once again, the Commission's rejection of the fundamental differences between the IRCs and the domestic specialized carriers is at the core of the flawed Order. The Commission stated that "the issue is not how AT&T treats the various IRCs respectively, but how it treats the IRCs as a group vis-a-vis other carriers including COMSAT General, DSCCs and SCCs."**

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*61 FCC 2d 587, at 655-56. (Emphasis added)

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**Order, p. 7. To the extend that Comsat General requires tail circuits for its Marisat service rendered via satellite earth stations jointly owned with the IRCs, such tail circuits could be obtained from AT&T at the same contract rates as the IRCs obtain tail circuits. [illegible] facilities, under Tariff No. 26

[illegible]

This quoted statement is contrary to the law dealing with rate discrimination. The evil sought to be avoided by the anti-discrimination sections of the Communications Act is discrimination by a carrier amongst competitors, thereby creating a competitive advantage to one customer.

The Commission has correctly stated the law:

> "In other words, where a carrier has monopoly control over essential facilities we will not condone any policy or practice whereby such carrier would discriminate in favor or (sic) an affiliated carrier or show favoritism among competitors" (Emphasis added)*

This interpretation of the law was reaffirmed and reemphasized by the Commission:

> "We do expect any carrier with monopoly control over essential local distribution facilities to grant non discriminatory access to those facilities to all carriers similarly situated..." (Emphasis added)**

Since Section 202(a) of the Communications Act was derived from Section 2 of the Interstate Commerce Act, the decisions relating to the Interstate Commerce Act are most pertinent. These decisions support the view that a finding of discrimination must involve different treatment of competitors. Thus in Shaw Warehouse Co. v. Southern Railway Co., 288 F.2d 759 (5th Cir. 1961), the Court, in discussing the application of Section 2, stated (at p. 771):

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*24 FCC 2d 318, at 347.

**61 FCC 2d 289, at 291. See also 29 FCC 2d 870, 940.

> "We prefer to err, if it be error, on the side of carrying out the broad policy of the Act of eliminating concessions by a railroad of any kind, direct or indirect, to the end that persons in the stream of transportation may carry on their business *on an equal basis with their competitors*." (Emphasis added)*

The IRCs are not competitors of the SCCs and DSCCs. The IRCs are not similarly situated to the totally different category of domestic carriers. The IRCs constitute a different classification. Thus there can be no unlawful discrimination by AT&T between the IRCs, on the one hand, and the SCC/DSCCs, on the other hand.

The Commisssion's expressed concern that the "IRCs may be recipients of subsidy from other facilities customers of Bell" is unfounded. Mere "concern" by the regulatory agency is no surrogate for probative evidence, for rational findings and for well documented conclusions, all of which are *sadly* lacking in the Order.

The Commission Misunderstood A Decisionally Significant Point Concerning Foreign Telecommunications Entities

WUI presented an important point in its Comments of June 23, 1975:

> "The abrogation by the Commission of the IRC/AT&T contracts may have serious repercussions in the delicate

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*See also *L.T. Barringer v. United States*, 319 U.S. 1,6 (1943) and *Lynchburg Traffic Bureau v. U.S.*, 225 F. Supp. 874 (W.D. Vir. 1963) which stated (at p. 877): "In respect to the §2 grievance of discrimination the answer is that this section has no relevancy here for it applies only to rates as between shippers or receivers of similar commodities for the same haul between the same points."

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> relationships between the U.S. communications industry and foreign telecommunications entities. As previously noted by WUI [citing its June 19, 1974 letter to the Commission], its own facilities contract with AT&T relates specifically to facilities provided to such foreign entities (¶3(d), for example). In addition, any abrogation of WUI's contract might impact upon the foreign entities through operation of the several TAT cable construction agreements (¶5(a) (b), TAT-6 Agreement, May 2, 1973, for example)."

WUI was referring to the transiting tail circuits through the United States furnished principally by AT&T (see above-cited TAT-6 Agreement), and to a lesser extent by the IRCs (see above-cited AT&T/WUI facilities contract), to the foreign telecommunications entities. If these transiting tail circuits are furnished to the foreign entities under higher-priced tariffs, as distinguished from the lower-rated existing contracts, there will be substantial increases in United States transiting tail circuit costs to the foreign entities. Reciprocally, these foreign entities can be expected to increase their charges to AT&T and the IRCs for their transiting tail circuits across foreign countries to reach more distant foreign terminal countries.

Clearly, the Commission misunderstood this point as demonstrated by the following sentences from the Order:

> "They [IRCs] contend that the latter [foreign entities] will charge more for reciprocal services if the IRCs must raise their rates to compensate for higher entrance and intercity facility charges." (Order, p. 4)

> "Further, we fail to see how the provision of domestic [sic] facilities to the IRCs under AT&T tariffs could have any bearing on the IRC relationship with foreign entities [footnote referencing the possibility of increased IRC charges to the public]." (Order, p. 7)

The Commission obviously has confused AT&T's charges to the foreign entities with the IRCs charges to the public. Consequently, the Commission missed the entire thrust of WUI's arguments. This raises the question of whether the Commission has ever reviewed AT&T's contractual obligations to furnish United States transiting tail circuits to foreign entities, which obligations are contained routinely in all cable construction agreements on file with the Commission, including the TAT-6 contract. Absent such a review, the Commission could not even be "concerned" that the IRCs might be receiving a subsidy through their existing contract rates with AT&T (Order, p. 7). Contrariwise, there might be a substantial negative net financial impact upon AT&T if it raises its charges to both the IRCs and the foreign entities for United States tail circuits, and thereby incurs higher reciprocal foreign transiting charges.

Increased charges by AT&T via tariffs to the IRC entities for tail circuits now provided under lower-priced contracts will inevitably lead to higher charges by AT&T to the foreign entities. The Commission has so ordained:

> "The public interest requires the provision of the subject facilities to all entities on the same terms, absent some justification for the difference." (Order, p. 6).

Notwithstanding this obvious confusion and misunderstanding on the part of the Commission, it has continuously refused to grant a hearing or conference to the IRCs on this subject. Under these circumstances, the Commission cannot assert any regulatory expertise as a valid substitute for probative evidence.*

The FCC's Failure To Utilize Hearing, Conferences Or Other Fact-Gathering Proceedings Resulted In An Inadequate Record And An Erroneous Decision

The previous discussion herein has highlighted the many deficiencies in the Order -- deficiencies which could have been corrected if the Commission had complied with certain elementary principles of administrative law.

As noted above, many of the parties herein requested the use of either formal or informal fact-gathering proceedings. ITT requested a "full opportunity for hearing" pursuant to Section 205(a) of the Act.** AT&T offered to participate in discussions under the aegis of the Commission because it "recognizes that changes in existing arrangements of the nature under consideration herein could have a significant impact on IRCs or their customers"* WUI also requested review and analysis of the issues herein by means of conferences.**

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*Docket No. 18875 demonstrates the Commission's concern with costs incurred with respect to foreign telecommunications facilities as they might impact upon the U.S. carriers and their ratepayers. See, e.g., Consultative Working Group, North Atlantic Telecommunications, (1) Minutes of Meetings Held March 17, 18 and 19, 1976 At Washington, pp. 14, 15; and (2) United Kingdom Contribution, Congestion of Atlantic Primary Satellite, pp. 2, 3.

**ITT Comments dated June 23, 1975 at p. 8.

Since specific and material issues of fact were raised by the various pleadings,*** due process of law requires that some form of evidentiary hearing be held. Bell Telephone v. FCC, 503 F.2d 1250, 1266-68 (3rd Cir. 1974), cert. denied sub nom. American Telephone Co. v. FCC 422 U.S. 1026 (1975). See also Mobile Oil Corp. v. FPC, 483 F.2d 1238, 1252-53 (D.C. Cir. 1973)

Instead of developing a full record, the Commission gave no more than cursory consideration to the relevant issues and manifested a misunderstanding of the issue briefed in the preceding section of this petition. All parties recognized that the Commission investigation involved a sweeping change in its prior policy and practice. The carrier-to-carrier contractural rates have been in effect for approximately thirty years. In Marine Space Enclosures,

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*AT&T Comments dated June 25, 1975 at p. 3.

**WUI Reply dated July 8, 1975, at p. 3; WUI letter of June 19, 1974.

***Some of the factual issues include the extent to which the facilities and services provided to the IRCs are similar or dissimilar to those services provided the domestic carriers and the factual basis for justification of the differences in rates.

Inc. v. Federal Maritime Com'n, 420 F.2d 577, 584-87 (D.C. Cir. 1969) the Court dealt with a similar attempt by an agency to use summary proceedings to effect a change in prior policy and practice. The Court held:

> "It is, to say the least, surprising that the Commission would depart from its own prior decisions...without discussing what points might further require an evidentiary hearing."
>
> "An agency may modify or even reverse its past policies and announcements, but the confidence of a reviewing court that these adjustments are made in accordance with the requirements of law is not enhanced when the prior precedents are not discussed, the swerves and reversals are not identified, and the entire matter is brushed off once over lightly."

As suggested by WUI and AT&T in their call for conference proceedings, the requirements of a particular case may call for procedures somewhere between the notice-and-comment procedure utilized by the Commission in the instant proceedings and a full trial-type hearing.

> "The choice is not between a full trial-type hearing and no public proceeding at all. The goal is rather to insure that administrators provide a "framework for principled decision-making- a framework that is appropriate for the issue at hand" O'Donnel v. Shaffer, 491 F.2d 59, 62 (D.C. Cir. 1974) quoting Environmental Defense Fund, Inc. v. Ruckelshaus, 439 F.2d 584, 598 (D.C. Cir. 1971).

The Commission could have readily developed a meaningful record capable of supporting conclusions fairly drawn from that record by holding partial evidentiary hearings on specific points, hearing expert testimony, holding conferences of all interested parties, giving the parties opportunity to make oral arguments or adopting any number of available techniques. These things were not done and, as a result the Commission has issued an Order incapable of withstanding close scrutiny.

Hearings And Conferences Are Required In The Interests Of Regulatory Fairness

The obvious bias against the position of the IRCs in this case and the prejudgment of the tariff versus contract issues shine forth clearly: (1) from the Commission's letter to AT&T of June 6, 1974, calling upon it to supercede the IRCs' contracts with tariffs; and (2) from the Commission's Order herein of May 7, 1975, finding in advance of requested pleadings that "there is no significant difference between" the facilities provided to the IRCs and those provided to the SCC/DSCCs.

Moreover, the Commission by its instant Order has unlawfully prescribed higher tail and intercity circuit rates for the IRCs, without according their statutory hearing rights to them, by admonishing AT&T that rates to the IRCs at the higher SCC/DSCC level would be accepted in waiver of the tariff filing rules; whereas the rule book would be thrown at AT&T if it sought to file lower tariff rates for the IRCs. (Order, p. 10).

The instant Order conceded in its first sentence that the tariff versus contract issue had been "designated for hearing."

Nevertheless, the IRCs were deprived of their hearing and conference rights without ever being told why. The basic precepts of regulatory fairness and regulatory courtesy have, thus, been violated.

WUI estimates that this Order will burden the IRC industry by upwards of $4 million annually, without regard to the likely reciprocal increase in foreign transiting charges that the IRCs will incur as a consequence of this Order. This substantial burden appears to be of no concern to the Commission. Inconsistently, the Commission has expressed great concern about the impact of increased telecommunications charges upon non-jurisdictional entities, such as the press, for whose benefit several proceedings have been instituted to determine the equities of such impact.

This lack of any noticeable concern by the Commission about the increased financial burden upon the IRCs resulting from the Order flies in the face of the Commission's "cost minimization criterion" proclaimed in the Overseas Facilities Docket No. 18875.* In that proceeding, the

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*Further Statement of Policy and Guidelines, November 29, 1976 (FCC 76-1069), p. 6. The Commission's rejection of the IRCs IRU-tail circuit proposal, briefed in the following section of this petition, also flies in the face of the Commission's "cost minimization criterion."

Commission and the industry have embarked upon an intensive study to achieve "the least cost combination of facilities" for international services.

This Commission, we respectfully submit, has an obligation to study on an evidentiary hearing record the equities of the adverse financial impact that will be generated by this Order upon the jurisdictional IRCs, who provide "vital" and "essential" services for which this Commission has regulatory responsibilities.

The IRCs Are Entitled To IRUs In The Subject Facilities

The pleadings submitted herein by the IRCs requested IRUs in the subject facilities in the event the carrier-to-carrier contractural rates were to be abolished. The Order summarily concluded, without any supporting findings, that IRUs are not an issue in this proceeding. This conclusion ignores the historical record relating to the contracts involved in this proceeding.

In 1968, AT&T applied to the Commission for authority to construct a landline cable between Green Hill, Rhode Island and Cheshire, Connecticut to provide tail circuits for the TAT-5 Cable. WUI then requested that any grant of authority be conditioned on WUI's securing IRU interests in these tail circuits connecting WUI's operating offices with the TAT-5 cable station at Green Hill.*

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*Letter dated July 19, 1968 from Robert E. Conn to the Commission, File No. P-C-7063. Green Hill has also become the station for TAT-6.

Thereafter, RCA and ITT sent similar letters to the Commission. AT&T opposed granting IRUs to the IRCs. It is important to note that the same facilities involved in the above dispute are included within the facilities now at issue herein.

Subsequently, the IRCs and AT&T conducted discussions concerning the terms and conditions under which TAT-5 tail circuits would be furnished to the IRCs. A compromise was reached, and WUI withdrew its objection to the grant of authority requested by AT&T. However said withdrawal was expressly without prejudice to WUI's right to reassert its position in any future proceedings and without recognizing the validity of AT&T's objections to IRUs in its landline tail facilities.* Thus the Commission's out-of-hand rejection of the IRU issue herein must be reconsidered.

The Commission has expressed its policy concerning ownership of facilities:

> "In general, we think that common carriers should own the facilities they use to serve the public unless there is some advantage in utilizing the facilities of another carrier or other entity, such as economy, efficiency, spectrum conservation, etc."**

In the instant proceeding, the carrier-to-carrier contract rates provided an advantage -- low cost. However the Commission's Order has removed that advantage and, as a result, IRUs in tail facilities now become imperative.

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*Letter dated December 2, 1968 from Robert E. Conn to the Commission, File No. P-C-7063.

**15 FCC 2d 1, 14.

There is no question that, absent a grant of IRUs, the increased costs of the tail facilities to the IRCs would ultimately be borne by the public either in the form of higher rates or deferral of rate reductions. Although the Commission presently appears to have difficulty accepting this principle,* it has acknowledged in the past that: "The cost of facilities to the carriers is bound to be reflected eventually in rates charged to their customers."**

The granting of IRUs in the subject facilities would be in furtherance of the Commission policy encouraging carriers to obtain ownership interests in facilities:

> "We also understand their evident desire to maximize investment as a basis for the opportunity to earn a fair return on captial devoted to public service.... We find that the most logical and equitable formula is one under which ownership is reasonably related to use. Any major departure from this principal would, in essence, mean that a carrier, ready, willing and able to pay for facilities which it actually requires to handle traffic would be required to lease them from a second carrier. The sole function of the second carrier would be that of the investor in facilities on which such second carrier would realize a return at the expense of the first-carrier user." (Second Report and Order on Ownership and Operation of Earth Stations, 5 F.C.C. 2d 812, 818-819).

Conclusion

In light of the foregoing, WUI respectfully requests that the Commission set aside its Order requiring AT&T to charge uniform rates to the IRCs and the DSCCs and SCCs. At a minimum, implementation of the Order should be deferred pending completion of an evidentiary hearing. In the alternative, the Commission is respectfully requested to grant IRUs to the IRCs in the subject facilities.

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*Order, p. 7.

**15 FCC 2d 1, 12.

The Commission is respectfully requested to schedule an oral argument *en banc* in order that WUI might explain directly the errors and inequities of the Order.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

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Dated: April 22, 1977

CERTIFICATE OF SERVICE

I, Diane A. DiNoia, hereby certify that the foregoing Petition of Western Union International, Inc. has been sent by United States mail, postage prepaid to the following:

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Dated: April 22, 1977

✓

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	Docket No. 20452
Interconnection Facilities Provided	)	
to the International Record Carriers	)	

PETITION FOR RECONSIDERATION

ITT World Communications Inc. (ITT Worldcom), pursuant to Section 1.106 of the Commission's Rules and Regulations, hereby submits its Petition for Reconsideration of the Commission's Final Decision And Order[1] (Final Decision) in the above-captioned proceeding. In support of this Petition, ITT Worldcom respectfully states:

The Commission's Final Decision concluded that the contracts between the American Telephone and Telegraph Company (AT&T) and the international record carriers (IRCs) for the provision of entrance and intercity facilities were inequitable and discriminatory in violation of Section 202 of the Communications Act.[2] Supporting this conclusion, the Commission noted that the provision of facilities by AT&T to the Specialized Common Carriers (SCCs) and the Domestic Satellite Common

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[1] FCC 77-179, released March 23, 1977.

[2] 47 USC § 202.

Carriers (DSCCs) is pursuant to tariff and contains different terms and conditions than the AT&T-IRC contracts. Moreover, the Commission also stated that this contractual arrangement may be discriminatory with regard to the provision of MARISAT services by COMSAT General via-à-vis the IRCs. Accordingly, it was ordered that AT&T must provide intercity and entrance facilities to the IRC's on the same terms and conditions as it offers those facilities to the SCCs, the DSCCs and COMSAT General.

As will be shown herein, the terms and conditions under which the IRCs and COMSAT General must conduct MARISAT services are identical; the IRCs, in comparison to the SCCs and the DSCCs, do not provide like serivces under like circumstances; the public interest questions raised by a modification or abrogation of the present operating arrangements of the IRCs are substantial; the effect of the Final Decision is to prescribe charges, classifications, regulations and practices without a full opportunity for hearing; and, lastly, the Commission's decision is unsupported by the record.

ITT Worldcom requests the Commission to reconsider its conclusions as set forth in the Final Decision, to recognize the validity of the AT&T-IRC contracts for entrance and intercity facilities in the provision of the IRC's regularly authorized services and to permit ITT Worldcom to continue to acquire the subject international facilities pursuant to the existing contract between AT&T and ITT Worldcom.

COMSAT General

The Commission's *Final Decision* recognized the untimely petition of COMSAT General which expressed concern that the continuation of the questioned contracts may give the IRCs an unfair competitive advantage over COMSAT General in the provision of MARISAT services. COMSAT General's petition was based upon its alleged concern that the interconnection facilities provided by AT&T to the IRCs pursuant to contract "are *likely* to be used by the IRCs in their provision of MARISAT services while COMSAT General will have to acquire similar interconnection facilities for use in its competing MARISAT services pursuant to tariff". 3/ Thus, COMSAT General requested the Commission to "remove this *potential* inequity." 4/ Similarly, the Commission, in granting this request of COMSAT General, stated:

> We find that COMSAT General and its MARISAT commercial customers *may* be disadvantaged by AT&T's provision of intercity and entrance facilities to COMSAT General's MARISAT competitors, the IRCs, on more favorable terms and conditions, including lower charges. 5/

Thus, the petition of COMSAT General and the resulting conclusion of the Commission is premised on the mere supposition that ITT Worldcom and the other IRCs *may* use the facilities acquired pursuant to the contract with AT&T to unfairly compete with COMSAT General. However, the Commission,

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3/ *Final Decision and Order*, *supra* note 1, para. 10, p. 5 (Emphasis supplied).

4/ *Id.* (Emphasis supplied).

5/ *Id.* at para. 12, p. 6. (Emphasis supplied).

in response to similar arguments of supposed anti-competitive behavior, has stated that it will not take regulatory action on this basis.

> ...[the Commission] cannot be expected to take regulatory action on the bais of bare, naked conclusions that a particular rate or rate proposal is or may be anti-competitive, in derogation of the Commission's policies.[6]

A fortiorai, the Commission should not alter a carrier's methods of operation based on its fear of a potential future violation of the law. This is consistent with the general legal principal that the courts will not enjoin conduct which is merely feared to take place at some future time[7]. In any event, the Commission has continuing regulatory jurisdiction over a carrier's rates and services[8] and should the IRCs engage in anti-competitive behavior, COMSAT General has a forum in which to seek redress of it grievances and the Commission has jurisdiction to correct this type of activity. Accordingly, COMSAT General's motion and the arguments contained therein should have been denied as mere conjecture and surmise in violation of Section 1.229 (c) of the Commission's Rules and Regulations.[9] This is especially true when it is considered that the contract between AT&T and ITT Worldcom has been in effect since 1968 and, yet, ITT Worldcom has not even attempted to use these facilities for the provision of its MARISAT services.

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[6] Memorandum Opinion and Order, Docket No. 19129, 38 F.C.C. 2d 981, 983 (1972). See also, Memorandum Opinion and Order, Docket No. 20250 and Docket No. 20251, 33 RR 2d 87, 91 (1975), where the Commission denied, in part, a motion to clarify and enlarge because it was based on surmise and conjecture in contravention of Section 1.229 (c) of the Commission's Rules and Regulations.

[7] Connecticut v Massachusetts, 282 U.S. 660 (1930); Holiday Inns of America, Inc. v B & B Corp., 409 [illegible] 2d 614 (1969); United States v. Cement Institute, 85 F. Supp. 344 (1949).

[8] Memorandum of Federal Communications Commission as Amicus Curiae, December 30, 1975, Civil Action No. 74 - 1698, D.C. D.C.

[9] Docket No. 20250 and Docket 20251, supra note 6.

Furthermore, the basis for COMSAT General's petition in this proceeding is unfounded in fact. As noted earlier, COMSAT General alleged the possibility that while the IRCs _may_ use the facilities contracted for under the operating agreements, COMSAT General would be required to use the facilities acquired under the OCC Facility Tariff.[10] On the basis of this supposition COMSAT General requested inclusion of the MARISAT question in this proceeding "so that the Commission can ensure that the MARISAT carriers will be afforded access to entrance and other interconnection facilities on an evenhanded basis."[11]

On October 3, 1975, AT&T forwarded a letter to RCA Global Communications, Inc. (RCA Globecom)[12] wherein AT&T stated that it will lease facilities for use in the conduct of maritime satellite services on the same basis as voice-grade data facilities contained in the OCC Facility Tariff. Consequently, both COMSAT General and the IRCs obtain facilities from AT&T for the provision of MARISAT services "on an evenhanded basis".

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[10] AT&T Tariff F.C.C. No. 266

[11] COMSAT General, Petition to Broaden the Scope, para. 2., p. 2., dated June 26, 1975.

[12] ITT Worldcom in addition to Western Union International, Inc., shares with RCA Globecom the voice-grade connecting facilities for the provision of MARISAT services. See Application of ITT World Communications Inc., File No. I-T-C-2628, para. 7(b), p.4, dated March 10, 1976; RCA Globecom, Application and Request for Temporary Authority of RCA Global Communications, Inc., File No. I-T-C-2629, para. 5, p. 4, n.* dated March 19, 1976; and, _Memorandum Opinion, Order and Authorization_ (FCC 76-1151), para. 6, p. 4, relased December 22, 1976.

However, even if there was discriminatory and preferential treatment between COMSAT General and the IRCs, the Commission's Final Decision failed to make any determination that the treatment was unjust or unreasonable as required by the Comminications Act.[13] That is, although certain conduct may be discriminatory and preferential, it is not violative of the Act unless it is unjust and unreasonable.[14] The Commission's Decision is utterly devoid of any finding of unjust or unreasonable discrimination but, again, merely states that COMSAT General's objections raise circumstances which "may" be disadvantageous. ITT Worldcom submits that events which may take place is an insufficient reason upon which to assert the regulatory powers of an administrative agency much less to find the type of discrimination condemned as unlawful by the Communications Act. In any event, the existence of equal treatment of both COMSAT General and the IRCs by AT&T in the provision of facilities for MARISAT service renders this rationale for the Commission's Final Decision moot and of no consequence.

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[13] 47 U.S.C. § 202(a).

[14] See Memorandum Opinion and Order (FCC 75-1230), para. 4, p.2, released November 21, 1975.

SCCs and DSCCs

Similar to its holding with regard to COMSAT General, the Commission found that the contractual arrangements between AT&T and the IRCs is discriminatory in relation to the SCCs and DSCCs. On this basis, the Commission felt that the public interest "requires the provision of the subject facilities to all entities on the same terms, absent some justification for the difference".[15/]

At the outset, it is interesting to note that the Commission's original Memorandum Opinion and Order in this Docket[16/] ordered that any interested parties may participate by filing comments.[17/] Although this opportunity was presented to the general public, the only party other than the respondents to file comments was COMSAT General. Even AT&T, which would stand to gain financially from the abrogation of the contracts though increased revenues, stated that these "contract arrangements have heretofore proved to be satisfactory to both the Bell System and the IRCs, and take into account the discrete needs of the IRCs for facilities between operating cities and for entrance channels from cable heads, radio sites and earth stations to their operating centers in metropolitan areas".[18/] Yet, the Commission, on its own initiative, determined that the public interest would be better served by

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[15/] Final Decision and Order, supra note 1, para. 13, p.6.

[16/] FCC 75-451, released May 7, 1975.

[17/] Id. at para. 5, p. 2.

[18/] AT&T, Comments, para. 2, p.3, dated June 23, 1975.

having the equal treatment of SCCs, DSCCs and IRCs.

Discrimination, as prohibited by the Communications Act, must not only be unjust or unreasonable but it must also be evidenced by different charges, to different customers, for like services, under like circumstances.[19/] As stated by the Commission, "Section 202 (a) prohibits only unjust and unreasonble discrimination between like services..."[20/] However, ITT Worldcom noted in its Comments that the facilities provided by AT&T to the IRCs, for the most part, are dedicated to the extension of overseas cable circuitry. Moreover, the circuits are used in the provision of a service which is the basis of agreements between the IRCs and their foreign correspondents. Under these circumstances, it is difficult to imagine how the services and the provision of those services by AT&T which meet the discreet needs of the IRCs are anything like the services provided to the SCCs and the DSCCs. Even if they were, the Commission made no finding of unjust or unreasonable discrimination. Instead, the Commission assumed, without more, that the operating arrangements were discriminatory and felt that in the absence of any justification by the carriers, they were unlawful.[21/] ITT Worldcom submits that the issue is not one of requiring the

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19/ *American Trucking Assoc.* v. F.C.C., 377 F. 2d 121, 130 (1966) *cert. denied*, 386 U.S. 943 (1967).

20/ *Memorandum Opinion and Order*, *supra* note 14.

21/ *Final Decision and Order*, *supra* note 1, para. 13, p.6.

IRCs to justify the arrangements, but rather the Commission showing how and why they are discriminatory on the basis of the record.

The Commission attempts to answer this issue by stating that the IRCs may be the recipients of subsidies from other facilities or services of AT&T.[22/] No plausible reason is given for this conclusion. On the contrary, it would seem more feasible that AT&T would subsidize its competitive services with its non-competitive services, a situation not all too unlikely in view of the Commission's findings in Docket No. 18128.[23/] The Commission also states that the facilities provided to the IRCs, the SCCs and the DSCCs, including COMSAT General, are "essentially identical" and the fact that the IRC's connect with jointly owned overseas cable and earth station facilities is irrelevant.[24/] Moreover, the Commission failed to see how the provision of these facilities under tariff would in any way affect the relationships between the IRCs and their foreign correspondents.[25/] Again, these appear as mere unfounded conclusions unsupported by anything in the record.[26/] and continue to place the inappropriate burden of a presumed discrimination on the IRCs.

22/ Id. para. 14, p. 7.

23/ 61 F.C.C 2d 587 (1976).

24/ Final Decision and Order, supra note 1, para. 14. p. 7.

25/ Id.

26/ Cf. Home Box Office, Inc. v F.C.C., ___ F. 2d ___, No. 75-1280 (D.C. Cir. March 25, 1977).

The burden is not on the IRCs to justify a discrimination until the Commission finds, by substantial evidence from the record, that the arrangements are discriminatory.

Mere general statements unsupported by the record will not suffice. The Commission must show, by reasoned decision-making, that the services provided by AT&T to the IRCs, the SCCs and the DSCCs are like services under like circumstances. This regulatory function, which is the basis of administrative law, is glaringly absent from the _Final Decision_.[27/] Without more, _the Final Decision_ cannot stand.

Questions of Substantial Public Interest

Aside from the question of the Commission's misinterpretation of the issue and lack of evidentiary support for its findings, it is clear that disruption of the present operating arrangements could have a serious impact on the relationships between the United States carriers and their foreign correspondents and the rate-paying public which they serve. For instance, if the Commission's _Final Decision_ stands and the IRCs are required to pay additional charges for entrance facilities, some modification of rates and/or present settlement arrangements appear likely. Additionally, the foreign correspondents would most likely reciprocate by raising their rates for identical services. The Commission does not deny this possibility but merely

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[27/] See _The Lack of Substantial Evidence_, _infra_ pp. 17-19.

states that it fails to see how its *Final Decision* will affect the relationships between the IRCs and their foreign correspondents[28] and states that if the IRCs must increase their charges, these new rates must be cost-justified.[29] This however, does not diminish the spector of an increase in rates by both the foreign administrations and the carriers. The mere possibility of such a reaction by the foreign correspondents in addition to the increase of the IRCs rates would appear to raise substantial public interest questions warranting, at the very least, a greater in-depth study of this problem.

The public interest questions do not rest here. As a direct result of the *Final Decision*, the benefits of cooperative testing by AT&T and the IRCs could also be seriously affected. Under the operating agreements both AT&T and the IRCs engage in cooperative testing whereby the IRCs, in response to a customer complaint, will test the facilities leased from AT&T, promptly find the problem and, in the meatime, patch the customer's circuit onto a spare facility. If AT&T decides to delete this arrangement in the name of "equality", the customer must contact the IRC who, in turn, must contact AT&T, who, in turn, must dispatch personnel to locate and correct the trouble condition. In short, this facet of the "integrity of service" concept will be eliminated. As paraphrased by the Commission in its *Memorandum Opinion Opinion and Order* in Docket No. 21122:[30]

> This concept, the IRCs urge, recognized that 'an end-to-end overseas leased channel communications capability between U.S. customers

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[28] *Final Decision and Order*, *supra* note 1, at para. 14, p.7.

[29] *Id*. at note 5, p. 7.

> and overseas offices will involve U.S. and international carriers, and if such carriers functioned independently of one another the utility of service would be adversely affected.[31]

That Order noted that the elimination of the interruption allowance by AT&T "raises substantial public interest questions".[32] Similarly, ITT Worldcom urges the Commission to recognize that elimination of cooperative testing will also cause an adverse impact on the public interest.

Of equal importance is the probable discontinuance of "through group technologies". For purposes of cost efficiencies, AT&T combines the single voice-grade channels provided to the IRCs with its own channels in the form of groups, super-groups and master-groups. Assuming, however, that AT&T decides to provide these facilities under the terms and conditions of the OCC Facility Tariff a voice-grade appearance at the earth stations and cable heads is necessary to provide a demarcation point for single carrier responsibility. The mechanics of this change will require the separation of group facilities at the earth stations and cable heads to establish a point of demarcation and then the re-grouping of these facilities for overseas transmission, all at an unneeded higher cost and lower efficiency.

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[31] *Id.* at para. 11, p. 5.

[32] *Id.* at para. 20, p. 10.

Thus, in the name of theoretical and unproven discrimination, the Commission would require AT&T and the IRCs to adopt a modus operandi,[33] which neither AT&T, the IRCs or any member of the public want, which will cost both AT&T and ITT Worldcom money, probably result in increased charges to the public and which will undoubtedly result in degraded and less efficient service. This is really a gratuitous exercise in regulatory symmetry at the expense of common sense.

The Prescriptive Effect of the Decision

The Commission spent a considerable amount of time on the question of its authority to modify or abrogate the contract between AT&T and the IRC's.[34] In this regard, the Commission concluded:

> ...the Communications Act implicitly authorizes us to modify or abrogate carrier-to-carrier con-

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[33] ITT Worldcom notes the remarkable inconsistency between the manner in which the Final Decision treats the two questions at issue in this proceeding. With regard to the issue of whether the IRCs should be required to offer international private line services directly to the premises of their gateway customers, the Commission observed:

> At the time this issue was designated for hearing we anticipated pleadings from current and potential IRC private line customers advocating such an offering. No such pleadings were filed, however, and we therefore conclude that there is no customer demand for the offering. Final Decision and Order, supra note 1, para. 22, p. 12.

The difference in the treatment accorded these issues is perhaps indicative of a "sentence first" (Carroll, Alice in Wonderland, Ch. 12) approach to the issue of IRC entrance and intercity facilities.

[34] Final Decision and Order, supra note 1, para. 15-17, pp. 8-10.

> tracts as we find inconsistent with the public interest. In the instant case, however, it is not necessary for us to order abrogation or modification of the contracts. 35/

It is clear, however, that the Commission did modify, if not abrogate the existing contractual arrangements. It ordered AT&T "to eliminate the inequitable and unlawfully discriminatory treatment of COMSAT General, DSCCs and SCCs" and strongly suggested that the proper vehicle to implement this change should be by tariff. 36/ ITT Worldcom submits that the effect of this conclusion and order is to modify or abrogate the existing contracts and, more importantly, to prescribe rates on the grounds of discrimination without benefit of a hearing on the merits.

It is a well recognized principle of law that the Commission need not explicitly state that its actions are intended to prescribe rates, if, by looking at the practical consequences of those actions, rates are, in fact, prescribed. 37/ Furthermore, the Communications Act explicitly establishes a procedural plan under which the Commission may prescribe rates. 38/ Under the Communications Act, the Commission

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35/ *Id.* at para. 16, p. 9.

36/ *Id.* at para. 17, p. 10.

37/ *AT&T* v. *F.C.C.*, 449 F. 2d 439 (2nd Cir., 1971); *Nader* v. *F.C.C.*, 520 F. 2d 182 (D.C. Cir., 1975).

38/ 47 U.S.C. §§ 203-205

may not establish a rate without affording the carrier "a full opportunity for a hearing" and without making the necessary findings that the present rate is unlawful and that the prescribed rates are "just and reasonable".[39] In short,

> There is no regulatory authority granted to the Commission...which permits it to circumvent the statutory plan of carrier initiated rate changes, a limited suspension period, rate refunds and rate prescriptions only after a full hearing and specific findings. [40]

Therefore, the Communications Act does not authorize the Commission to establish a rate or charge without affording the carrier the procedural safeguards established by Sections 203 to 205 of the Communications Act.

The Commission's original Order[41] in this Docket stated that the investigation of the contract/tariff question was instituted pursuant to Sections 201 to 205 of the Communications Act.[42] The Commission's *Final Decision* ordered, pursuant to Sections 201-205, that AT&T "remove the unlawful discrimination" in question.[43] In reaching this conclusion, the Commission was swayed by the different "terms and conditions" contained in the CCC Facility tariff as opposed to the subject contracts.[44] Therefore, even though the Commission did not explicitly state that its actions were intended to prescribe rates, without a doubt, this proceeding was conducted pursuant to the prescriptive authority of the Commission.

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[39] *AT&T* v. *F.C.C., supra* note 37, at 450; *AT&T* v. *F.C.C.*, 487 F.2d 865, 875 (2nd Cir.

[40] *Id.*

[41] *Supra* note 16.

[42] *Id.* at para. 3, p. 2.

[43] *Final Decision and Order, supra*, note 1, para 25, p. 13.

The effect of the Final Decision was also, without a doubt, a prescriptive order. Regardless of whether AT&T raises or lowers the present rates or even applies the terms and conditions contained in the present contracts to the DSCCs, the SCCs and COMSAT General, the fact remains that the Commission has "under an order for investigation" prescribed on the basis of alleged discriminatory conduct, "what will be the just and reasonable charge . ... and what classification, regulation or practice is or will be just, fair, and reasonable, to be thereafter followed."[45] The Commission's Final Decision also had the effect of a cease and desist order from the alleged discrimination violation.[46] All of this without a "full opportunity for hearing."

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[44] Terms and conditions, this instance, equates to the charges, classifications, regulations and practices of the IRCs and AT&T. See, e.g., id. at para. 14, p. 17.

[45] 47 U.S.C. § 205(a).

[46] Id.

Thus, the Commission's prescription of charges, classifications, regulations and practices of the international record carriers without the statutory benefit of a hearing rests not on findings about its intrinsic merits couched in the required statutory terms, but on the Commission's unanalysed preference for equal treatment. The decisions of federal courts make clear that foundations so flimsy will not sustain a prescriptive order.[47]

The Lack of Substantial Evidence

In view of the Commission's reasons for reaching its conclusions in this Docket, it is necessary to point out the judicial and administrative standards which must guide the decision-making process of a regulatory agency.[48]

It is a well established principle of administrative law that the conclusions reached by administrative agencies must be supported by substantial evidence. As stated in N.L.R.B. v. Columbian Enameling and Stamping Co.:[49]

> ...Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established.' It means such relevant evidence as a reasonable mind might

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[47] National Ass'n of Motor Bus Owners v. FCC, 460 F.2d 561 (2nd Cir. 1972); AT&T v. FCC, supra note 37.

[48] See, e.g., Home Box Office, supra note 26.

[49] 306 U.S. 292 (1939).

> accept as adequate to support a conclusion'
> [citing case] . . . [50]

Consequentially, an agency decision must present recognizable support for its conclusions[51] and it must articulate a "rational connection between the facts found and the choice made".[52] General findings, therefore, are not sufficient to support an administrative ruling unless they are supported by subordinate findings of fact that have an adequate basis in the record.[53] As stated by the Supreme Court:

> ...[t]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.[54]

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[50] *Id.* at 300.

[51] *Bowman Transp. Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 231, 285 (1974) ("reviewing court must consider whether the decision was based upon a consideration of the relevant factors"); *Hawaiian Tel. Co.* v. *FCC*, 498 F.2d 771, 777 (D.C. Cir. 1974) ("Agencies [must] present sufficient support for their conclusions"); *American Trucking Ass'n* v. *FCC*, *supra* note 19, at 134. See also *Columbia Broadcasting System, Inc.* v. *FCC*, 454 F. 2d 1018, 1025 (D.C. Cir. 1971); *American Broadcasting Co.* v. *FCC*, 179 F. 2d 437, 444 (D.C. Cir. 1949).

[52] *Burlington Truck Lines* v. *United States*, 391 U.S. 156, 168 (1962).

[53] *Florida* v. *United States*, 282 U.S. 194, 213 (1931); *Public Service Commission of the State of New York* v. *F.P.C.*, 511 F.2d 338, 345-354 (D.C. Cir. 1975); *Continental Air Lines, Inc.* v. *C.A.B.*, 519 F.2d 944, 959 (D.C. Cir. 1975).

[54] *S.E.C.* v. *Chenery Corp.*, 318 U.S. 80, 94 (1943); see also, *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2nd Cir., 1975).

In the absence of specific findings, no reviewing court will be able to say (1) whether the Commission found that the similarities between the IRCs and the SCCs, the DSCCs and COMSAT General are sufficient to justify the Commission's holding that IRC entrance channel facilities should be covered by tariff rather than the existing contracts or (2) whether the FCC blandly ignored the distinctions pointed out to it in promulgating the order requiring the tariffing of these facilities.

Even if, with careful parsing, the Commission's opinion could be reed as including findings of the kind required by Sections 202(a) and 205, they are, on this record, arbitrary and capricious. The findings, if any, are simply conclusory assertions which apply to the operating arrangements of AT&T and the IRCs and do not provide a scintilla of support for the Commission's Order that these contracts are unjustly and unlawfully discriminatory vis-a-vis the SCCs, DSCCs and COMSAT General and that equality of treatment is in the public interest in the international market. On the contrary, the Commission has simply decreed a predetermined result without adequate explanation.

Conclusion

Clearly, the Commissions Final Decision is an incorrect interpretation of the facts and application of the law and is inequivocally inconsistent with "the ideal of reasoned decision-making on the merits which undergirds all of our administrative law." [55/]

[55/] *Home Box Office*, *supra* note 26, at 94.

The allegations of COMSAT General were founded on mere apprehension of a future event which the Commission sought to prevent, if not enjoin. Moreover, the factual distinctions upon which the Commission made its findings of discrimination in this regard proved to be non-existent. In a similar vein, the record is devoid of any evidence which could permit the Commission to find that the provision of facilities by AT&T to the SCCs and the DSCCs in relation to the IRCs is a like service under like circumstances. Indeed, it is questionable on what basis the Commission reached this conclusion at all. Certainly, it was not on the basis of reasoned decision-making supported by substantial evidence in the record..

In view of these considerations, the substantial public interest questions and the unlawful prescription of charges, classifications, regulations and practices without the statutory benefit of a hearing, the Commission is requested to reconsider its Final Decision in this matter.

Respectfully submitted,

ITT World Communications Inc.

By

Joseph J. Jacobs

Randall B. Lowe

Dated: April 25, 1977

Its Attorneys
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CERTIFICATE OF SERVICE

I, Valerie Carrasco, certify that I have this 25th day of April, 1977 sent a copy of the foregoing "Petition for Reconsideration" by United States mail, first class postage prepaid, to the following:

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Valerie Carrasco

Valerie Carrasco

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities Provided) Docket No. 20452
to the International Record Carriers)

To: The Commission

PETITION FOR RECONSIDERATION

RCA Global Communications, Inc. (RCA Glōbcom) hereby requests, pursuant to Section 405 of the Communications Act of 1934, as amended, and Section 1.429 of the Commission's Rules and Regulations, that the Commission reconsider*its Final Decision and Order, published March 25, 1977, 42 F.R.16177, in the above captioned proceeding, to wit that:

> AT&T Long Lines Department and Bell System Operating Companies shall, within 30 days of the publication of this Decision in the Federal Register, and on not less than 90 days' notice to the public if tariffs are filed, remove the unlawful discrimination in the provision of entrance and intercity facilities as between the IRCs and the DSCCs and SCCs.

Preliminary Statement

In a Memorandum Opinion and Order, released on May 7, 1975, 52 FCC 2d 1014, the Commission ordered an investigation into: (1) whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts; and (2) whether

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* RCA Glōbcom is filing concurrently herewith a "Request for Stay" of the subject Order. We believe that because of the substantial public interest issues raised herein the Commission should address this matter expeditiously and that a stay should be granted pending such action.

the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers. The Commission classified this proceeding as restricted rule-making and stated that its decision "will be based on matters submitted for or incorporated into the record herein."

In its March 25, 1977 Order the Commission stated that it had considered "the two issues designated for hearing in the above-captioned matter"* and concluded, "after a full consideration of this record"** that: (a) AT&T should be required to provide intercity and entrance facilities to the IRCs on the same terms and conditions as it offers these facilities to the specialized common carriers (SCCs), the domestic satellite common carriers (DSCCs) and Comsat General; and (b) the public interest did not at this time require the IRCs to offer their customers end-to-end private line service within the gateway cities.

RCA Globcom takes exception to the Commission's conclusion that the issue of the provision of entrance facilities by AT&T to the IRCs under contract was "fully considered on the record". In fact, as will be shown herein, the record does not support a finding that the provision of these facilities to the IRCs must be on the same terms and conditions as that for the SCCs, DSCCs and Comsat General. Instead, it would appear that the Commission largely ignored the data submitted to it by the respondent carriers which leads to the conclusion opposite to that reached in the Order.

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* Para. 1

** Para. 23

I. The Service Provided to the IRCs Under Contract is Not "Similar" to That Provided to the SCCs and DSCCs Under Tariff

The Commission's analysis rests on the erroneous premise that the service received by the IRCs is "similar" to that provided to SCCs and DSCCs. Thus, the Commission found that "the contract terms and the terms of the tariff, while providing similar service, are different and that no justification has been shown for such a difference".* The record, however, simply does not support this finding.

Rather, the record reflects that the contract arrangements between AT&T and the IRCs were designed to take into account the discrete needs of the IRCs, particularly for entrance channels extending their international circuits from the U.S. cable terminals and Intelsat earth stations to their operating centers in the metropolitan areas designated by the Commission as international gateways.**

It was further a matter of record that the Settlement Agreement in Docket No. 20099 specifically noted the "unique needs of the [IRCs] between gateway cities and for entrance channels from cable heads and earth stations to those carriers' central offices in metropolitan areas".* Although the Commission chose to ignore the arguments presented to it that provision of service to the IRCs is "unique",** there are a number of significant factors which differentiate the IRCs from OCCs. Among these are the following:

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* Order, Para. 13

** See Communications Act of 1934, section 222(a)(5)

(1) Neither the location of international cable and satellite facilities nor the cities which are established as international gateways are under the control of the IRCs. Under the circumstances, the IRCs are not in a position to locate the overseas transmission facilities they must use in close proximity to their gateway operating centers to minimize extension costs.

(2) The OCCs' main requirements are for end links and local loops from their operating centers to customer locations. The IRCs primary needs, on the other hand, are for entrance facilities between the IRC operating offices and the AT&T network; extensions to cable heads which are operated by AT&T for the cable owners including the IRCs; and extensions to the U.S. Intelsat earth stations which are operated by Comsat for the earth station owners

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* See American Telephone and Telegraph Company, 52 FCC 2d 727, 735 (1975).

** Order, Para. 14.

including the IRCs. The IRC trunk extensions are embedded in composite, long-haul facilities which involve different interface parameters and operating and maintenance procedures than the customer loops provided to the OCCs.

(3) International satellite circuits entering the U.S. are not multiplexed into voice-grade circuits at the earth station but are transmitted through the AT&T network on a group or supergroup basis. The IRCs' circuits are mixed in with telephone circuits in these groups and do not have a discrete identity until they reach the AT&T operating center. Under these circumstances, the IRCs cannot piece out their circuits at the earth station and transmit them by some other means unless the necessary channel translating equipment is installed for their circuits,and possibly AT&T's as well, at additional cost to the carriers and to Comsat which would have to provide matching channel bank equipment. Should the existing contractual arrangements be replaced by OCC arrangements, this may well have to be the case.

(4) The IRCs need the substantial operating flexibility presently provided under the existing contracts which heretofore have not been provided under AT&T's OCC tariffs. For example, OCC tariffs do not specify a fixed loss* from one end of the circuit to the other whereas the circuits the IRCs now receive from AT&T under their contracts provide for a fixed loss. When a circuit is engineered, it is necessary to know the amount of loss in order to set up equipment properly. However, under OCC tariffs, because no fixed loss is provided, the circuit could not be engineered in advance of bringing up each circuit and actually measuring the loss. The net result is that all circuits coming in from AT&T could have different levels. Since we are working into an international carriersystem, such nonstandardization would complicate maintenance and other operational functions.

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* "Loss" refers to the decrease in the strength of the signal as it travels from one end of the circuit to the other.

In order to standardize loss characteristics, it would be necessary to incur expenditures for the equipment required.

(5) In order to isolate faults to a particular section of the overall international channel for which the IRC is responsible, testing is required between an IRC's central office and the cable head. On the other hand, under the "integrity of service" revisions to the OCC tariffs*, testing could be prohibited between the IRCs and the AT&T personnel who staff the cable heads and any other AT&T office in the link.

(6) Domestic extensions of overseas circuits are presently configured and loaded to accommodate normal operations as well as to meet restoral requirements as the result of joint planning efforts between the IRCs, AT&T and the overseas correspondents. If the IRC entrance circuits were treated merely as tariffed facilities, we could be deprived of our present participation in determining how the system is configured and loaded.**

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* These provisions are presently under investigation in FCC Docket No. 21122.

** It should be noted that the IRCs own an interest in the cable head and that it would be incongruous to say the least for us not to have the right to continue to test with facilities we own.

(7) The IRC facilities in question have been specifically authorized by the Commission to carry only overseas--as opposed to domestic--traffic. For example, in authorizing RCA Globcom to acquire additional voice grade lines between its New York and Miami gateways, the Commission conditioned the grant as follows:

> "[The] circuits listed herein having both terminals within the conterminous United States shall be used only for the transmission of service messages and traffic originating in or destined to points outside the several states (excluding Alaska and Hawaii) and the District of Columbia."*

(8) The IRCs do not generally provide domestic service and do not generally compete directly either with AT&T or with the OCCs and DSCCs.** Although the Commission fails to give any weight to this fact, we submit that this is an added and important consideration which differentiates the IRCs. It should also be noted that the IRC arrangements long predate the arrangements made for OCCs and DSCCs.

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* Order and Authorization in File Nos. T-C-1973-7 et al., adopted July 22, 1970.

** The only example of "direct competition" cited by the Commission in the Order is that between certain of the IRCs and Comsat General for Marisat traffic. (Para. 12). However, as noted in Point III infra, Marisat entrance facilities are not taken by the IRCs under their contracts and the alleged discrimination does not exist.

All of the above are substantive differences which require consideration and which refute the Commission's finding that AT&T service to the IRCs under contract is similar to that rendered under OCC tariffs.

II. Assuming *Arguendo* That Such Service Is Deemed Similar, the Differences Which Exist Have Not Been Shown To Be "Unjust and Unreasonable"

Even if we assume *arguendo* that the service provided to the IRCs is in fact deemed similar to that provided to the OCCs and DSCCs, it still must be shown that the difference in charges and terms to the IRCs is "unjust and unreasonable".* Thus, the Commission did not indicate in what respects the rates or other terms given to the IRCs are "unjust and unreasonable," but appears to have merely concluded contrary to statute that the difference in charges *in itself* constituted conclusive evidence of an unreasonable and unjustified discrimination. This, we submit, is improper. In other words, while there may be a "discrimination", the fact of the discrimination itself does not make it "unreasonable".

In this case, we submit that, contrary to the unsupported assertions contained in the Order, ample justification exists for the difference in terms to the IRCs. Certainly, it would make little sense to require that the method of handling overseas circuits at the earth stations be changed at additional cost with no compensating benefits and the very real possibility of degradation. Additionally, because of the restrictive operating parameters of the OCC tariffs, problems will arise with respect to operating circuit levels and fault isolation procedures.

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* Communications Act, §202(a); *Telpak Rates*, 38 FCC 370 (1964), aff'd. *American Trucking Associations Inc. v. FCC*, 377 F. 2d 121 (D.C. Cir. 1966), *cert. denied*, 386 U.S. 943 (1966).

Indeed, if the transmit and receive levels, i.e., the strength of the signal passed on to the IRCs and transmitted by them, currently specified in the OCC tariffs are adopted, all interfacing between domestic and international facilities may have to be changed. Since OCC tariff levels differ from existing international practice, their application in lieu of the standards followed under the IRC contracts will likely necessitate significant expenditures by both AT&T and the IRCs for amplifier and pad equipment to accommodate the new levels and to compensate for loss (see p. 6 supra) on circuits emanating from cable heads. At earth stations, where high frequency multiplexing is used, it is not clear how such a standard would be applied. In sum, it would appear that substantial modifications in the present system of handling international circuits would have to be made to obtain satisfactory service.

Similarly, if IRC and AT&T personnel are no longer permitted to collaborate to insure that circuits are properly configured and loaded to accommodate normal operational or emergency restoral requirements, severe operating difficulties could result as well as increases in costs resulting from duplication of effort and facilities. It also must be recognized that the SCCs and DSCCs have a choice as to where they will locate their central offices and earth stations in relation to AT&T facilities whereas the IRCs are restricted to the gateways designated by the Commission and the cable landing site determined by AT&T.

For all of the above reasons, justification for continuing to provide service to the IRCs under their existing contracts rather than under tariff exists. Certainly, it is illogical to create operational problems where none presently exist. Most important, the mandated changes will adversely affect users of the service.

We therefore submit that the terms of the existing contracts are indeed tailored to meet the "unique needs" of the IRCs. Accordingly, the test laid down by the Commission that there must be "some justification for the difference" has been met. To hold, as the Commission does in paragraph 14 of its Order, that it is "not persuaded" by AT&T or the IRCs that the provision of the subject facilities to the IRCs is somewhat "unique", completely disregards the record and the facts of the matter. The differences in the terms under which service is provided thus have not been shown to constitute an unjustified discrimination in the provision of "like" communications services in violation of Section 202(a) of the Communications Act.

III. The Findings Regarding Comsat General Which Were Given "Decisional Significance" are Factually Inaccurate

The finding by the Commission in Paragraphs 12 and 14 of the Order that Comsat General may be disadvantaged by AT&T's continued provision of intercity and entrance facilities to the IRCs, which are

Comsat General's Marisat competitors, on more favorable terms and conditions is clearly erroneous. In fact, the facilities provided to the IRCs for Marisat services are not taken under contract with AT&T but rather under OCC tariffs. (See Exhibit A annexed hereto)

Thus, Marisat service is distinct and apart from that service under consideration in this proceeding. Consequently, there is no basis in fact for the conclusion expressed by the Commission in paragraph 17 of its Order that the abrogation of the IRC contracts is necessary in order to eliminate the inequitable and unlawful discriminatory treatment of Comsat General by AT&T.

IV. There Is No Basis On The Record For The Statement That The Charges To The IRCs "May not be Compensatory"

The Commission, in paragraph 14 of its Order, states that it is "concerned that the charges to the IRCs may not be compensatory and the IRCs may be recipients of subsidy from other facilities customers of Bell or from Bell's interstate service offerings." However, there is nothing on the record which would warrant the expression of such a concern. Further, there is nothing in the record nor has the Commission made a finding that the charges under the AT&T contracts are not just and reasonable. Valid findings of this kind based on substantial evidence are an essential prerequisite to the exercise of authority under Section 205 of the Communications Act,* which is cited by the Commission as support for its Order in this proceeding.** Although it may be contended that the Commission is not "prescribing" rates in this instance, the Courts have determined that the "actual impact of agency action and not its form is decisive."***

It is reasonable to conclude, however, that if there is an increase in charges to the IRCs to levels approximating those in AT&T Tariff No. 266, these costs will have to be reflected in their charges to the public. Indeed, charges for certain services may necessarily have to be increased or the IRCs will suffer out-of-pocket losses.

For example, as shown in Attachment A, RCA Globcom estimates that if it is required to pay OCC rates to extend 50 kbs leased satellite channels from the international earth stations to its operating centers, the monthly rates to the public could increase as much as $5,300 in the case of service from San Francisco and $3,300 in the case of service from Washington, D. C. via Etam.

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* American Telephone and Telegraph Company v. F.C.C., 449 F. 2d 439, 450 (2d Cir. 1971).

** Para. 25.

*** American Telephone and Telegraph Co. v. F.C.C., 487 F. 2d 865, 874 (2d Cir. 1973); see also Nader v. FCC, 520 F. 2d 182, 199 (D.C. Cir. 1975).

RCA Globcom further calculates that, if present OCC rates are to apply generally, its costs for the facilities it now obtains from AT&T will increase by between $1.5 million and $2 million annually. Before increases of this type may be imposed, it is essential that a sound factual basis be established, which was not even attempted, much less done here.

V. The Abrogation of the IRC Contracts Is Not Required in the Exercise of the Commission's Public Interest Functions

In paragraph 15, the Commission addresses itself to its authority to modify or abrogate the subject contracts. In so doing, however, it fails to consider the basic question of whether the rates under the IRC contracts are so low as to adversely affect the public interest, that is, cast upon the other consumers an excessive burden, or be unduly discriminatory. No such finding was made by the Commission. Accordingly, it is submitted that the Commission has not supported its finding that the abrogation of the subject contracts would be consistent with the public interest.

As noted in Point II supra, the FCC cannot lawfully vitiate a contract or order a rate to be changed in the absence of the requisite statutory finding that the preexisting charge is unjust and unreasonable. We submit that the FCC must first find the charges to the IRCs to be unlawful in appropriate proceedings before it takes the action contemplated here.*

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* AT&T v. FCC, 487 F. 2d 865 (2d Cir. 1973); F.P.C. v. Sierra Pacific Power Company, 350 U.S. 348, 355 (1951).

VI. Changes in the Existing Treatment of IRC Facilities May Adversely Affect Relationships With Foreign Entities

In its discussion of this issue, the Commission concludes that "it fails to see how the provision of domestic facilities to the IRCs under AT&T tariffs could have any bearing on the IRC relationships with foreign entities." (Para. 14) However, the record showed that if the cost of international extension facilities to the IRCs were to increase, the cost of facilities transiting the U.S. made available to foreign operating entities by the IRCs may also have to be increased. If this occurs, such foreign entities might increase their charges to the IRCs, and possibly to AT&T as well, for transiting facilities provided to the U.S. carriers overseas.

As stated by AT&T in its "Reply Comments" of July 8, 1975:

> "[I]f the Commission requires the use of tariffs for the provision of facilities to the IRCs, it may well have significant impact on the relationships between United States carriers and foreign telecommunications entities which transit the United States if these entities are also required to obtain transiting facilities under tariff. It is not unlikely that these foreign administrations, particularly those which are members of the European Conference of Posts and Telecommunications Administrations (CEPT), might increase the charges to AT&T and other United States carriers for transiting facilities overseas. The Commission is inquiring into the arrangements between United States carriers and foreign entities in a separate proceeding (Docket No. 19031), and the Commission should not take any action in this proceeding which will cause an adverse impact on the charges paid by United States carriers for the substantial numbers of facilities they use overseas."

Thus, the U.S. carriers' overall cost of providing service could be increased unnecessarily by a change in the current method of providing facilities to the IRCs as contemplated by the Order.

Furthermore, if the IRC circuits were to be broken out at the earth stations (see p. 5 supra), it could affect the entire multiplexing scheme of existing transmission systems. For example, under the present arrangements, one group may be sufficient to accommodate all traffic voice and record say between New York and Nairobi. However, if the IRC traffic were separated, two groups may be needed (N.Y./ Nairobi telephone, Etam/Nairobi record) creating additional expense at the overseas as well as the U.S. end, such as for additional channel banks at the foreign earth station.

We submit that, at a minimum, the Commission had an obligation to look into the matter of how changing the present practice under which the IRCs obtain facilities to one more closely approximating OCC arrangements would affect relationships with foreign entities before casually dismissing the argument of the carriers.

VII. Conclusions of Law

An administrative order cannot be upheld unless its findings and conclusions are based on fact.* Further the Commission must do more than enumerate factual differences or similarities. It must explain the relevance of these differences or similarities to the purposes of the Communications Act.* Assertions such as "unpersuasive" or "irrelevant" without factual basis do not meet this test.

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* S.E.C. v. Chenery Corp., 318 U.S. 80, 95 (1943).

It is also well-established that under the Administrative Procedure Act an agency has an obligation to realistically tailor its proceedings to fit the issues before it.** The kind of procedure required must take into account the kind of questions involved, that is, whether an oral hearing is required or instead a notice and comment is all that is needed.***

In the instant case, the Commission's adopted procedure may have been adequate for a preliminary evaluation of the problem, but when it became clear from the pleadings that there were substantial differences as to facts and the conclusions drawn from them, the Commission should have "designated the two issues for hearing"**** as it stated it did but in fact did not. If the Commission was not prepared to accept the IRCs' representations, it should have given them an opportunity to document their pleadings through expert testimony and other appropriate means. Instead, it made its judgment based on findings of fact that are erroneous and unsupported by the record.

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* Columbia Broadcasting System, Inc. v. FCC, 454 F. 2d 1018, 1026 (D.C. Cir., 1971)

** City of Chicago V. F.P.C., 458 F. 2d 731, 743 (D.C. Cir., 1971), Cert. denied, 405 U.S. 1074 (1972).

*** Walter Holm & Co. v. Hardin, 449 F. 2d 1009, 1015 (D.C. Cir. 1971).

**** Para. 1

Indeed, it would appear that the Commission has not done the analysis required of it but has instead viewed this matter in its most simplistic terms. Namely, if AT&T provides X amount of line to Carrier "A" on one set of terms and charges, the Commission has held it must also provide X amount of line to Carrier "B" on the same basis, notwithstanding any differences which may exist between A and B resulting from the nature of the traffic handled on the lines, acts of the Commission in licensing the lines, operational practices affecting the lines or competitive considerations.

In view of all of the above, it is requested that the Commission expeditiously consider and grant this petition for reconsideration, set aside its Order of March 25 in this Docket, and conduct such further proceedings as may be necessary, including holding an evidentiary hearing for the purpose of developing the facts of the matter and of resolving the issues presented, as would appear to have been the purpose of the Order of May 7, 1975.*

Respectfully submitted,
RCA GLOBAL COMMUNICATIONS, INC.

s/Francis J. DeRosa

s/Charles M. Lehrhaupt
60 Broad Street
New York, New York 10004

s/Walter H. Morse
2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

April 25, 1977

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* American Telephone and Telegraph Company v. FCC, No. 74-2101, D.C. Cir., decided February 1, 1977.

EXHIBIT A

AT&T Long Lines
110 Belmont Drive, Building C
Somerset, New Jersey 08873
Phone (201) 885-3111

October 3, 1975

Mr. R. C. Lewis
Manager, Circuit Management and Restoration
RCA Global Communications, Inc.
60 Broad Street
New York, NY 10004

Dear Roger:

This confirms my telephone conversation with Mr. Vitale on October 1 and receipt of his letter dated September 29, 1975 regarding provision of facilities for your Marisat services.

We can provide you conditioned voice grade facilities between your New York terminal and a point of connection with The Woodbury Telephone Company which serves Southbury, Connecticut. This facility would be provided under the terms and conditions of our Tariff F.C.C. No. 266. Monthly charges of $308.10 and a non-recurring charge of $105.10 would apply for the C-2 conditioned facility. When you place a firm order for this facility, we would need to know at what point and facility assignment we would meet The Woodbury Telephone Company.

Regarding the California requirement, you should contact Mr. D. E. Nordstrom, who, as you know, is the Pacific Telephone B.P.O.C. who would provide you facilities in the State of California.

Should you desire to order the above Connecticut facility, please forward your request on the new Facility Request form now in use for Tariff No. 266 facilities.

Very truly yours,

s/Don Haynes

cc: Mr. D. C. Nordstrom

ATTACHMENT A

REVENUE REQUIREMENT FOR 50 KBS LEASED SATELLITE CHANNEL SERVICE

	From San Francisco, Calif. via Jamesburg		From Washington, D.C. via Etam, West Virginia	
	Present Revenue Requirement $	Projected Revenue Requirement $	Present Revenue Requirement $	Projected Revenue Requirement $
(1) Investment	19,089	19,089	15,795	15,795
(2) Return & Taxes	3,436	3,436	2,843	2,843
(3) Operating Costs:				
(a) Depreciation, Taxes & O&M	7,183	7,183	6,737	6,737
(b) Satellite Rental	67,020	67,020	42,420	42,420
(c) Landline Rental	18,300	74,254	20,400	54,346
(d) General & Administrative	14,523	23,276	10,920	16,250
(e) Total Operating Costs	107,026	171,733	80,477	119,753
(4) Annual Revenue Requirement	110,462	175,169	83,320	122,596
(5) Monthly Revenue Requirement	9,205	14,597	6,943	10,216
(6) Present Monthly Tariff Rate	9,205		6,925	
(7) Projected Monthly Tariff Rate		14,600		10,200

Note:
At current tariff rates, RCA Globcom would not even recover its projected payouts to Comsat and AT&T (Lines 3(b) plus 3(c)).

CERTIFICATE OF SERVICE

I, Phyllis M. Polay, hereby certify that on this 25th day of April, 1977, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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Phyllis M. Polay

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Interconnection Facilities Provided to the International Record Carriers	))))	Docket No. 20452

PETITION FOR CLARIFICATION

American Telephone and Telegraph Company (AT&T) respectfully requests clarification of the Final Decision and Order (Order) of the Commission in this proceeding, released on March 23, 1977 (FCC 77-176). In support of this request for clarification, AT&T respectfully shows:

1. In the Order, the Commission concluded that "AT&T shall be required to provide intercity and entrance facilities to the IRCs [International Record Carriers] on the same terms and conditions as it offers those facilities to the SCCs [Specialized Common Carriers] and DSCCs [Domestic Satellite Common Carriers."*

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* Order, para. 33.

2. As outlined in AT&T's Motion for an Extension of Time, dated April 15, 1977, AT&T has undertaken extensive efforts to analyze the actions required to comply with the Commission's Order. These efforts presently indicate that the appropriate course of action to comply with the Commission's Order and to implement the Commission's objectives is to offer facilities to IRCs under tariffs filed with the Commission. However, our analysis has disclosed a number of unique situations which may not have been contemplated by the Commission when it issued its Order herein and which may not be appropriate for inclusion in the tariffs proposed to be filed to comply with the Order. Accordingly, clarification is requested as to the need to take action to cover those situations.

3. Certain facilities are furnished to specific IRCs which, for varying reasons, are unlike any facilities furnished to SCCs and DSCCs. Specifically, AT&T currently furnishes one IRC with one telegraph grade circuit between the IRC's Miami Gateway and the submarine cable station at Key West, Florida, where it is connected to facilities of the Cuban American Telephone Company and is extended to Cuba. This facility was provided since it was the only feasible means to satisfy an IRC requirement for a private line telegraph channel to fulfill an order from a foreign government. AT&T furnishes another IRC with one group bandwidth (48 kHz) facility between the IRC's operating center in Washington, D.C. and the INTELSAT System earth station in Etam, West Virginia with

interfaces at high frequency in connection with a unique NASA overseas service provided by the IRC. At the time it was installed, the IRC's requirement could not be met in any other practical manner. AT&T does not propose to offer telegraph grade facilities or high frequency interfaces for wideband facilities to the IRCs in the future. Neither is offered to SCCs or DSCCs. Clarification is requested as to whether the Order permits AT&T to continue providing the limited telegraph grade and the group high frequency interface facilities that are currently provided under existing arrangements with the IRCs concerned.

4. AT&T also provides facilities to the IRCs in connection with restoration of services in the event of a failure in a trans-oceanic submarine cable system, or in an INTELSAT satellite system path. These facilities are provided in accordance with restoration plans developed with and agreed to by the participating United States international carriers, COMSAT and foreign correspondents. These plans have been filed with the Commission. They involve the taking of actions under certain contingencies which are not included in the terms and conditions offered in connection with furnishing facilities under tariffs to SCCs and DSCCs. When a failure occurs in an international facility, these restoration arrangements involve temporarily rerouting circuits in an interrupted system to preassigned facilities extending

to another cablehead or to another earth station. AT&T believes that the Order does not relate to the furnishing of facilities in accordance with these international restoration plans because the circumstances are dissimilar to any involving SCCs and DSCCs, and requests the Commission to clarify this point.

5. AT&T, pursuant to contract, currently provides three IRCs with television transmission facilities in New York City and San Francisco and between those cities and INTELSAT System earth stations. Such facilities are used by the IRCs in providing Overseas Television Service which is offered by the IRCs and AT&T, pursuant to Commission Order,* on a weekly rotational basis under a joint tariff. The intercity facilities furnished to IRCs** are being provided on an occasional use basis at charges based on an initial 10 minute minimum rate plus an "each additional minute" charge. If intercity television facilities were provided under OCC facility tariffs, they would be provided on a monthly basis. Accordingly, clarification is requested as to whether AT&T may, in compliance with the Commission's Order, provide intercity television facilities to the IRCs on the above-described part-time basis while making similar facilities available to other carriers

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* See 18 F.C.C.2d 402 (1969).

** The local channel facilities furnished the IRCs are physically the same as those offered by Bell System associated companies in the OCC facility tariffs and they are not, therefore, the subject of this request for clarification.

only on a full-time, monthly basis in light of the facts that: (i) the contractual arrangements for TV facilities were not considered in this proceeding: (ii) overseas television service is provided under an arrangement whereby each IRC provides service only one week out of four; and (iii) the offering that is made to the public by AT&T and the IRCs under the joint Overseas Television Service Tariff (F.C.C. No. 2) is also on an occasional part-time basis.

6. AT&T believes that, subject to the Commission's clarification, the Order does not require action in respect of the matters covered by this petition because of the unique nature of each. Thus, pending the Commission's final order on this petition, it believes that no action should be initiated which would affect these matters.

WHEREFORE, AT&T respectfully requests that the Order be clarified with respect to the matters described herein and that, because of the unique nature of each matter, pending such clarification, the Commission's Order in respect of these matters be held in abeyance to the extent it may be necessary to enable the Commission to act on this petition and to enable AT&T to take action, if any is required, to comply with the decision.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By__________ /s/Alfred C. Partoll
Alfred C. Partoll

By__________ /s/Lee S. Cutcliff
Lee S. Cutcliff

By__________ /s/Gerald E. Murray
Gerald E. Murray

195 Broadway
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By__________ /s/Edgar Mayfield
Edgar Mayfield

By__________ /s/Alfred G. Walton
Alfred G. Walton

Routes 202-206
Bedminster, New Jersey 07921

Its Attorneys

April 25, 1977

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition For Clarification of American Telephone and Telegraph Company in F.C.C. Docket No. 20452 was served this 25th day of April, 1977, by mailing copies thereof by United States mail, postage prepaid, to the following persons at the addresses shown below:

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/s/John T. Egan
John T. Egan

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of International Facilities Provided to the International Record Carriers	)	Docket No. 20452

To: The Commission

REQUEST FOR STAY

RCA Global Communications, Inc. (RCA Glōbcom) hereby requests that the Commission's Final Decision and Order, FCC 77-176, published March 25, 1977, 42 F.R. 16177, in the above-captioned proceeding (Order), be stayed pending a decision on RCA Glōbcom's "Petition for Reconsideration" filed on this date.

In its Petition for Reconsideration, RCA Glōbcom has shown that the record in this proceeding does not support the Commission's findings and conclusions. We have demonstrated that the service provided to the international record carriers (IRCs) under contract and that provided to OCCs under AT&T Tariff F.C.C. No. 266 are not "similar service;" that even if assuming arguendo such service were deemed to be "similar", the differences between the terms of the AT&T/IRC contracts and the terms of the tariff are not "unjust and unreasonable"; that it was error to give "decisional significance" to the alleged fact that continuation of the existing IRC contracts would accord them an "unfair competitive advantage" in competing with Comsat General for Marisat services; that there was no basis in the record to support the conclusion that the charges to the IRCs by AT&T "may not be compensatory;" that the abrogation of the IRC contracts was not required in the public interest; and that provision of domestic facilities to the IRCs under OCC tariffs may well affect the IRC relationship with foreign entities and the charges to the U.S. carriers foroverseas facilities. We have further indicated that substantial increases in the cost of international services to U.S. rate payers could result if the existing arrangements for IRC entrance facilities are changed to more closely approximate OCC arrangements.

Accordingly, RCA Globcom requested the Commission to set the Order aside and to conduct such further proceedings as may be appropriate, including the holding of an evidentiary hearing if necessary to develop the required factual record.

The courts have enumerated the following circumstances in which a stay is proper: (1) the applicant is likely to prevail on the merits of its appeal; (2) the applicant will sustain irreparable injury if the stay is denied; (3) the issuance of a stay will not cause substantial harm to others; and (4) the public interest will not be harmed by the granting of a stay.* These standards have also been used by the

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* Virginia Petroleum Jobbers Association v. FPC, 259 F. 2d 921 (D.C. Cir. 1958).

Commission in determining whether a stay should be granted.* RCA Globcom submits that the application of these criteria to the present situation supports the grant of a stay.

Likelihood of Success on the Merits

The record in this proceeding shows that the contractual arrangements between AT&T and the IRCs are designed to take into account the discrete needs of the IRCs, particularly for entrance channels from the international cable heads, earth stations and radio sites to their operating centers in metropolitan areas established by the Commission as gateways under §222 of the Act. The record further evidences the fact that these facilities are U.S. extensions of the overseas cables and satellites circuits, and therefore distinguishable from facilities provided under OCC tariffs. Moreover, even assuming *arguendo* that these IRC facilities are deemed "similar" to the services provided to the DSCCs and SCCs, the difference in the terms under which service is provided to the IRCs by AT&T vis-a-vis the others does not constitute an "unjust or unreasonable" discrimination. §202(a).

Although the Commission largely ignored the arguments presented to it which supported a finding that the service provided to the IRCs is "unique", we have listed in our petition a number of significant operational, regulatory and cost factors which clearly differentiate the IRCs from OCCs and DSCCs. These include the manner in which international facilities are established and operated as contrasted to OCC and DSCC facilities; the methods employed in handling the extensions of international satellite circuits from the earth stations through the AT&T network which have a valid cost and operational rationale; the fact that the IRCs require greater operating flexibility than has been provided under existing OCC arrangements to maintain grade of service; the need to follow coordinated restoration procedures in the event of the failure of an international transmission facility; the fact that the IRC facilities in question are limited by the Commission to the handling of overseas traffic; and the fact that the IRCs do not generally compete either with AT&T or with the OCCs and DSCCs.

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* See, *e.g.*, *The Western Union Telegraph Company, Tariff F.C.C. No. 251*, 59 F.C.C. 2d 1253 (1976).

We also pointed out that the Commission erred in according "decisional significance" to the alleged competitive disadvantage Comsat General would suffer if it were required to take Marisat entrance facilities under OCC tariffs while its IRC competitors for Marisat service were able to obtain such facilities under their contracts. In fact, Marisat entrance facilities are provided to both the IRCs and Comsat General pursuant to the OCC arrangements and the position taken by Comsat General in this proceeding is moot as a practical matter.

RCA Globcom further has shown in its petition that implementation of the Order will not serve the public interest in that it could lead to substantially higher charges to the public for international communications services; adversely affect relationships with foreign entities which jointly provide international service to the ultimate detriment of the U.S. ratepayer who will have to bear the cost of any increase in charges to the U.S. carriers for overseas facilities; and result in a degradation in the quality of international service now presently made available.

The Commission's Order cannot be upheld unless the grounds upon which the Commission acted in exercising its powers can sustain its action.* Further, the Commission must do more than enumerate factual differences or similarities. It must explain the relevance of these differences or similarities to the purposes of the Communications Act.** When it became clear from the pleadings on the record that there were substantial differences as to the facts of the issues and the conclusions drawn from them, the Commission should have "designated the two issues for hearing" as it stated it did but in fact did not.*** If the Commission was not prepared to accept the IRCs' representations, it should have given them an opportunity to document their pleadings through expert testimony or other appropriate means. Instead, it reached conclusions based on findings of fact that are erroneous, unsupported by the record and contrary to operational practice.

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* S.E.C. v. Chenery Corp., 318 U.S. 80, 95 (1943).

** Columbia Broadcasting System, Inc. v. FCC, 454 F. 2d. 1018, 1026 (D.C. Cir. 1971).

*** See Walter Holm & Co. v. Hardin, 449 F. 2d. 1009, 1015 (D.C. Cir. 1971).

Absent the Issuance of a Stay
RCA Glōbcom will be Irreparably Injured

RCA Glōbcom will be irreparably injured should it be required to take the services which are presently being provided by AT&T under contract on a basis similar to the manner in which service is provided to OCCs under AT&T Tariff F.C.C. No. 266.

The Commission's action reverses long-established industry practices. The operational difficulties which flow from such a decision are many. First, it should be recognized that international satellite circuits entering the U.S. are not multiplexed into voice-grade circuits at the earth station but are transmitted through the AT&T network on a group or supergroup basis. The IRCs' circuits are mixed in with telephone circuits in these groups and do not have a discrete identity until they reach the AT&T operating center. Under these circumstances, the IRCs cannot piece out their circuits at the earth station and transmit them by some other means without provision being made for the necessary channel translating equipment for their circuits, and possibly AT&T's as well, at additional cost. If such an expense is incurred and the respondent's petition for reconsideration is granted, the action taken by the IRCs may operationally foreclose them from reverting to their original position under the terms of their contracts. The action of the Commission has thus put RCA Globcom in a position of effectively having no other options except to take service on whatever basis AT&T chooses to offer it.

Secondly, it must be recognized that OCC tariffs are very restrictive in the specification of operating parameters. For example, assuming that the technical constraints delineated in present OCC tariffs would be applied to the IRCs, problems will arise with respect to operating circuit levels and fault isolation procedures. Also, if the levels currently specified in the OCC tariffs are adopted, all interfacing between domestic and international facilities may have to be changed.

Since the OCC tariffs specify particular transmit levels with no fixed loss from one end of the circuit to the other, their adoption in lieu of the standards followed under the IRC contracts will likely necessitate significant expenditures by both AT&T and the IRCs for amplifier and pad equipment to accommodate the new levels on circuits emanating from cable heads. At earth stations, where high frequency multiplexing is used, it is not clear how such a standard would be applied. In sum, substantial changes in the existing system of handling international traffic would have to be made to make it work satisfactorily.

Thirdly, the IRCs are responsible for isolating a circuit fault to a particular section of the overall channel, which in turn requires testing between the IRC central office and a cable head. However, the "integrity of service" revisions to the OCC tariff stipulate that testing is prohibited with AT&T personnel who in this instance staff the cable heads.* Thus, the entire procedure could break down to the eventual detriment of the public receiving service.

Lastly, the changes proposed could affect circuit restoration. The IRCs and AT&T work together to insure that the domestic extension of overseas circuits are configured and loaded to accommodate normal operation as well as circumstances when restoration of a major international facility is needed. Should the IRCs' efforts not be handled in a coordinated manner as would be the case under OCC tariffs, severe operating difficulties could result as well as increased costs resulting from duplication of efforts and facilities.

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* These provisions are presently under investigation in FCC Docket No. 21122.

Until the Commission can consider these issues in the context of RCA Glōbcom's "Petition for Reconsideration", the status quo should be preserved through the issuance of the requested stay. Otherwise, the operational difficulties and disruptions of service to the public could result in irreparable injury to RCA Glōbcom and its customers.

The Issuance of a Stay Will Not Cause Substantial Harm to Others

The Commission by its Order is reversing long established precedent. All the IRCs and AT&T have indicated their opposition to this course of action.* Only Comsat General alleges a "potential inequity", should the IRCs be permitted to continue to provide their Marisat services pursuant to their contracts with AT&T rather than pursuant to tariff, because of"a potential disparity in rates" charged by AT&T to the competing Marisat carriers.** However, the finding by the Commission in support of Comsat General's position*** is clearly erroneous since as noted above the facilities provided to the IRCs for Marisat services are not taken under contract with AT&T but rather under OCC arrangements. Therefore, the Commission's conclusion in paragraph 17 of its Order that the discontinuance of the IRC contracts is necessary to eliminate the inequitable and unlawful discriminatory treatment of Comsat General by AT&T is unwarranted and unsupportable. This being the case, there is no way in which Comsat General will suffer substantial harm. Nor will the OCCs and DSCCs suffer any injury if the IRC contract arrangements are continued pending reconsideration. These carriers do not provide overseas service and are not in direct competition with the IRCs.

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* Order, paras. 5, 6 and 7.

** Order, para. 10.

*** Order, paras. 12 and 14.

The Public Interest Will Not Be Harmed by a Grant of a Stay

As noted above, the Order contemplates drastic changes in established industry practice and could result in substantially increased costs and operational difficulties for the IRCs and their customers. If there is an increase in charges to the IRCs by AT&T to levels approximating those in AT&T Tariff F.C.C. No. 266, RCA Globcom's cost of doing business will increase as much as $1.5 million to $2 million annually which will have to be reflected in its charges to the public. For example, as shown in RCA Globcom's Petition for Reconsideration (see p. 13 and Attachment A), if it were required to pay OCC rates to extend 50 kbs leased satellite channels from the international earth stations to its operating centers the cost to the public for this service will have to be increased by from $3,300 to

$5,300 a month. We submit that before such increased costs and changes in industry structure are imposed, the Commission should consider the arguments raised in our petition. Additionally, if a stay is granted, no user will be deprived of services nor will the services be withheld from the public by virtue of the existence of the stay. On the other hand, the public interest may be harmed by denial of a stay.

Conclusion

For the foregoing reasons, as well as those set forth in RCA Glōbcom's Petition for Reconsideration, all the requirements applicable to the issuance of a stay are satisfied. Additionally, it should be noted that where a petition for reconsideration raises substantial issues which must be considered by the Commission, the public interest is best served by awaiting a final disposition of that petition. Under such circumstances the status quo should be maintained.* It is submitted that such is the case before the Commission in this proceeding. Therefore, it is requested that the Order be stayed pending and subject to the decision on RCA Glōbcom's Petition for Reconsideration.

Although, as indicated, RCA Glōbcom submits that a grant of the requested stay is fully justified in the circumstances present here, in the event the Commission denies this request, RCA Globcom further requests that a reasonable period of time be granted to allow it to seek a stay from a reviewing court and that the Commission defer the requirement that we comply with the Order until the Court has had an opportunity to rule.*

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* See The Western Union Telegraph Company, 59 FCC 2d 1253 (1976).

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/Francis J. DeRosa

s/Charles M. Lehrhaupt

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s/Walter H. Morse

2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

April 25, 1977

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* See *International Record Carriers' Communications*, 61 FCC 2d 183, 195 (1976), *Communications Satellite Corporation*, 57 FCC 2d 571, 577 (1976).

CERTIFICATE OF SERVICE

I, Phyllis M. Polay, hereby certify that on this 25th day of April, 1977, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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Phyllis M. Polay

✓

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Interconnection Facilities Provided)
to the International Record Carriers)

Docket No. 20452

COMMENTS

ITT World Communications Inc. (ITT Worldcom) hereby submits its Comments with regard to the Petition for Clarification of the American Telephone and Telegraph Company (AT&T) in the above-captioned proceeding.

The Petition of AT&T seeks clarification and, pending clarification, abeyance of the Commission's Final Decision and Order[1] (Final Decision) in this proceeding because "[c]ertain facilities are furnished to specific IRCs which, for varying reasons, are unlike any facilities furnished to SCCs and DSCCs."[2] More specifically, AT&T notes the dissimilarities between the IRCs, on the one hand, and the SCCs and DSCCs, on the other hand, in the provision of telegraph grade facilities, high frequency interfaces for wideband facilities, television transmission facilities, and facilities provided in connection with restoration plans "developed with and agreed to by the participating United States international carriers, COMSAT and foreign correspondents."[3/]

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[1] FCC 77-179, released March 23, 1977.

[2] AT&T, Petition for Clarification, para. 3, p. 2, dated April 25, 1977.

As ITT Worldcom pointed out in its Petition for Reconsideration[4/] of the Final Decision, "the IRCs, in comparison to the SCCs and the DSCCs, do not provide like services under like circumstances."[5/] On this basis, ITT Worldcom questioned the Commission's holding in this proceeding which found that the contractual arrangements between AT&T and the IRCs are discriminatory in relation to the SCCs and DSCCs and that the public interest "'requires the provision of the subject facilities to all entities on the same terms, absent some justification for the difference.'"[6/]

ITT Worldcom submits that in addition to the reasons cited in its Petition for Reconsideration, the instant Petition of AT&T provides additional reasons and support against the Commission's finding of discrimination, much less, unjust or unreasonable discrimination as contemplated by the Communications Act.

[3/] Id. at para. 4, p. 3.

[4/] ITT Worldcom, Petition for Reconsideration, dated April 25, 1977.

[5/] Id. at p. 2. See also, id. at pp. 7-10.

[6/] Id. at p. 7 as quoted from the Final Decision, supra. note 1, at para. 13, p. 6.

Furthermore, AT&T states that in complying with the Commission's Final Decision, AT&T will "offer facilities to IRCs under tariffs filed with the Commission"[7/] -- presumably the CCC Facility Tariff. ITT Worldcom demonstrated in its Petition for Reconsideration that the increased charges of the CCC Facility Tariff as opposed to the operating arrangements would have a serious impact on the rate-paying public because of the discontinuance of cooperative testing and "through group technologies" in addition to increased rates. Moreover, the relationships between the United States carriers and their foreign correspondents could also be affected by the probable modification of rates and/or present settlement arrangements and the reciprocal increase of rates by foreign carriers.

At the time of filing its Petition, ITT Worldcom stated that the increased charges to the public and the degraded and less efficient service were a probability. Now, with the indication by AT&T that at least some, if not all, of the subject facilities are to be provided under the CCC Facility Tariff, the public interest questions raised by the Commission's Final Decision are even more pressing.

Accordingly, ITT Worldcom strongly urges the Commission to recognize the statements of AT&T in its Petition for Clarification in deciding on ITT

[7/] Petition for Clarification, supra, note 2, at para. 2, p. 2.

Worldcom's Petition for Reconsideration. At the very least, the Commission should, "because of the unique nature" of the IRCs' services, hold its *Final Decision* in abeyance until the questions raised by AT&T are resolved.

Respectfully submitted,

ITT World Communications Inc.

By

Joseph J. Jacobs

Randall B. Lowe

Its Attorneys
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Dated: May 5, 1977

CERTIFICATE OF SERVICE

I, Valerie Carrasco, certify that I have this 5th day of May, 1977 sent a copy of the foregoing "Comments" by United States mail, first class postage prepaid, to the following:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of
Interconnection Facilities Provided to the International Record Carriers.
) Docket No. 20452

To: The Commission

REPLY COMMENTS

Western Union International, Inc. (WUI) hereby submits its Reply Comments with respect to the Petitions for Reconsideration filed in the above-captioned proceeding by RCA Global Communications, Inc. (RCA) and ITT World Communications Inc. (ITT) and with respect to the Petition for Clarification filed herein by American Telephone and Telegraph Company (AT&T).

1. RCA, ITT and WUI in their respective petitions each submitted varying and independent arguments supporting the conclusion that the Commission erred in failing to hold a hearing prior to issuance of its Final Decision and Order, dated March 23, 1977, (Order) in this proceeding.

2. A review of the various petitions submitted herein indicate a multitude of factual issues which require the holding of an evidentiary hearing. In addition to the issues highlighted in WUI's petition relating to the differences

in the facilities provided to the IRCs as contrasted to those provided the domestic carriers; and the factual basis for the differences in rates,* the following issues also raise relevant factual matters which could only be investigated by means of an evidentiary hearing:

¶ The effect the higher tariff rates would have on the rates charged foreign telecommunications entities by AT&T and the reactions of foreign administrations to an increase in rates;**

¶ The effect that the abrogation of the AT&T - IRC contracts would have on existing cooperative testing of the tail circuits from the cable/satellite earth stations;***

¶ The effect of the Order on the tail circuits provided to the IRCs in connecting with international circuit restoration plans which not only effect the IRCs, but also involve Comsat and foreign correspondents;****

¶ The effect that the abrogation of the AT&T - IRC contracts would have on the existing circuit group transmission technologies now used to provide the IRCs with access to the cable and earth stations;*****

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*WUI Petition, p. 16. See also, WUI Petition pp. 1-2 for definition of "tail"circuits which are appendages of overseas cable and satellite circuits.

**RCA Petition, pp. 15-16; ITT Petition, p. 11; WUI Petition, pp. 12-15.

***RCA Petition, p. 7; ITT Petition, p. 11.

****AT&T Petition,pp. 3-4; RCA Petition, p. 7. As the Commission should know, there is a multinational organization -- Mutual Aid Working Group (MAWG) -- which deals specifically with the restoration of international cable and satellite circuits and their tail circuit appendages in the event of circuit outages. The impact of the Order upon MAWG must be investigated.

*****RCA Petition, p. 5; ITT Petition, p. 12.

> ¶ What, if any, changes would be necessitated in the transmitting and receiving level of the signal strength of tail circuits as a result of the Order.*

3. It is clear that the Order never addressed most of the above issues and summarily rejected the positions taken by the IRCs as to other of these issues. However, there is no basis in the record for the Commission's position. These very important issues were just brushed aside by the Commission. The order is replete with findings such as "no justification has been shown", "we fail to see", and "we are not persuaded". However, these are merely conclusory words, barren of analysis. There is no basis for excluding certain of these issues, as requested by AT&T (e.g., restoration tail circuits), without investigating the interrelationship of all of the relevant issues concerning IRC tail and intercity circuits.

4. The fact is that any failure by the IRCs to convince the Commission of their position is primarily due to the failure to hold an evidentiary or fact finding hearing. How can one show justification when the Commission closes its eyes? How can one persuade when the Commission turns a deaf ear? How can one be sure that the Commission fully comprehends the issues or grasps the relevant precedents when there has never been a hearing, conference, or oral argument in this case?

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*RCA Petition, p. 10.

5. The lack of a hearing in this matter is even more glaring when one considers that the Order, in fact, was a prescription of rates under Section 205 of the Communications Act. As indicated in WUI's Petition at page 18:

> "Moreover, the Commission by its instant Order has unlawfully prescribed higher tail and intercity circuit rates for the IRCs, without according their statutory hearing rights to them, by admonishing AT&T that rates to the IRCs at the higher SCC/DSCC level would be accepted in waiver of the tariff filing rules; whereas the rule book would be thrown at AT&T if it sought to file lower tariff rates for the IRCs."

6. Thus, this case is very similar to American Telephone and Telegraph Co. v. F.C.C., 449 F. 2d 439 (2d Cir. 1971). In that case the Commission found AT&T's Telpak sharing provisions unlawfully discriminatory and required AT&T to end the discrimination by filing tariffs providing for unlimited Telpak sharing. The court stated:

> "We affirm the Commission's holding that the Telpak sharing provisions are unlawfully discriminatory; but we reverse its prescription of unlimited sharing for failure to conform the requirements of §205 (a) that the prescribed practice be found to be "just, fair, and reasonable" and that the prescribed rates be found to be "just and reasonable." We therefore remand this case to the Commission for a hearing and determination as to what remedy for the discriminatory sharing would satisfy those statutory requirements"*

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*444 F. 2d at 450.

7. A further indication that a hearing is necessary in this proceeding can be found in the Commission's treatment of the press industry. In 1963 and again in 1975, the Commission ordered hearings concerning the impact of proposed increased rates upon the press.* Inconsistently, the Commission has evidenced a concern for the impact of increased rates upon the *non-jurisdictional* press industry while showing no concern in this case for the *jurisdictional* IRC industry.

8. The AT&T, ITT and RCA petitions coroborate WUI's position that the facilities at issue in this proceeding are tail circuit appendages of the international cable and satellite systems. Therefore, the Order, which treated these facilities as being similar to the facilities provided the specialized domestic carriers by AT&T, is in error.

9. Support for our position is found in: (a) the Transaltantic Cable Construction and Maintenance Agreement, dated September 30, 1957 (TAT-2); and (b) the Transatlantic No. 5 and Mediterranean No. 1 Submarine Cable System Construction and Maintenance Agreement dated June 20, 1968 (TAT-5/MAT-1). Both Agreements state that the *cable system* includes microwave segments identical to the tail circuits at issue herein.

***Preferential Press Rates*, 56 FCC 2d 796 (1975). See Also, *Private Line Case*, 34 F.C.C. 1094 (1963), wherein the Commission excepted the press industry from increased tariff rates pending a hearing.

Thus, TAT- 2 consists of five segments, one of which is a microwave radio relay system between the cable station in Canada and the Canada/ United States boundary.* Similarly, TAT-5/MAT-1 defines the system as including a microwave radio relay system between Portugal and the TAT-5 cable station in Spain, and another such microwave system between the TAT-5 and MAT-1 cable stations in Spain.**

10. Thus, microwave tail circuits have, in certain cases, been contractually considered an integral part of the cable system. In other cases (e.g., tail circuits from Green Hill), these types of circuits have been covered by separate contracts. In all cases, however, these tail circuits are appendages of international cable or satellite systems. Accordingly, all such tail circuits are properly the subject of contractual arrangements between carriers, and they are dissimilar from "entrance" facilities provided under tariff by AT&T to specialized domestic carriers.

11. The petitions of RCA and ITT also support WUI's position that the Order will have an adverse impact on the transitting charges made by foreign administrations to AT&T and the IRCs. This contention was brushed aside, albeit mistakenly, by the Commission Order.*** However said rejection is contrary to past Commission precedents concerning charges for foreign transitting circuits.

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*TAT-2 Agreement, p. 2.

**TAT-5/MAT-1 Agreement, p. 2-6.

***Order, p. 7.

12. In 1970, the Commission established policy guidelines governing transit satellite circuits.* The Commission expressly recognized in that case, what it apparently cannot comprehend in this case: namely, that increased U.S. tail circuit transitting charges to foreign entities will provoke higher reciprocal foreign transitting charges to U.S. international carriers:

> "Additionally, as may be seen, any policy adopted with respect to acquisition of satellite circuitry of foreign transit points can provide a precedent for acquisition by foreign entities of satellite circuitry at U.S. points for traffic between two foreign points." (23 F.C.C. 2d at 10).

The Commission rejected Comsat's position which would have allowed it to acquire the transitting facilities from the foreign entities and then have required the IRCs to obtain said facilities from Comsat. In so doing, the Commission noted that the "net effect [of the Comsat proposal] could be an increase in overall costs"** and that said increase would be "chargeable to the public."***

13. Almost since the inception of the TAT cables, the Commission has been deeply concerned with transit tail

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*Transiting Traffic, 23 F.C.C. 2d 9.

**23 F.C.C. 2d, at p. 14.

***23 F.C.C. 2d, at p. 15.

circuit costs incurred by the United States carrier abroad (and reciprocally with United States transit tail circuit costs incurred by our foreign correspondents). In a letter (famous within our industry) of July 5, 1960, the Commission counseled all United States IRCs that each should pay a specified lease charge of $2,273 per annum for each telegraph transitting tail circuit in Europe, and the Commission recognized the contractual nature of this relationship:

> "It is recognized that in some instances certain of the American carriers may be required to reach particular European countries through indirect routes because they do not operate circuits to the TAT country which has a cable terminal near the hinterland European country involved. Under such circumstances, it appears that what has been said herein before should be modified to permit the American carrier to absorb any additional transit charges applicable to the inidrect route. However, in order to obviate any opportunity for claims of unfair competitive advantage, it would be expected that any such proposal will be submitted to the Commission for consideration and comment before it is reduced to a final agreed-upon contract." (FCC Letter ofJuly 15, 1960, p. 7).

14. In another Commission letter to WUI, dated March 8, 1973, the Commission modified its 1960 policy:

> "In the ensuing years, however, there have been a number of developments and changes in charges which make the existing figures obsolete, and which lead us to believe that the application of our basic principle of equal cost sharing requires a downward readjustment of the $2,273 figure. Among

> such developments are the establishment of separate charges for the eastern halves of cable and satellite channels distinct from extension charges from the terminus of such channels, and the establishment of uniform extension rates by CEPT and the CCITT at levels lower than those formerly obtaining." (FCC Letter of March 8, 1973).

15. WUI will be pleased to make available to the Commission copies of the aforementioned 1960 and 1973 Commission policy letters, if they are not now conveniently available. We have briefed this long-standing Commission precedent to enable the Commission to comprehend how it has departed therefrom in its instant Order by failing to grasp the interlocking relationship between U.S. and foreign transitting tail circuit charges. The instant Order requires, under any reasonable and even-handed interpretation, that AT&T treat the IRCs and the foreign entities alike for the purpose of tail circuit charges. Indeed, AT&T might have a contractual obligation to do so (See WUI Petition, pp. 12-13, and 14).

16. By refusing to face or understand the IRCs' concern with the effect of the Order upon their relationship with foreign entities and upon the IRCs' tail circuit costs both within the U.S. and abroad, the Commission has in effect overturned, sub silentio, the policy guidelines set forth in the 1960, 1970, and 1973 precedents cited above. This manner of changing well-settled policy flies in the face of judicially-mandated administrative procedure:

> "An agency may modify or even reverse its past policies and announcements, but the confidence of a reviewing court that these adjustments are made in accordance with the requirements of law is not enhanced when the prior precedents are not discussed, the swerves and reversals are not identified, and the entire matter is brushed off once over lightly."*

17. It is undisputed that the Order will result in substantially higher costs to the IRCs for the subject facilities and even higher costs when the foreign administrations react.** Yet the Commission seems totally unconcerned with the impact of such an increase on the IRCs. This attitude must be contrasted with the Commission's treatment of the press, explained above. The Commission's failure to allow the IRCs the same consideration it has shown the press is, to say the least, puzzling, in light of the Commission's description of the IRCs as being "essential to the national interests" and "vital to the public interest."***

---

*Marine Space Enclosures, Inc. v. Federal Maritime Com'n., 420 F. ed 577, 584-87 (D.C. Cir. 1969).

**WUI Petition for Reconsideration, p. 19.

***42 F.C.C. 2d 774, 781.

Conclusion

18. In light of the foregoing, the Commission is respectfully requested to grant the various Petitions for Reconsideration filed in this proceeding. Specifically, WUI requests the following relief:

(a) The Commission should set aside its Order requiring AT&T to charge the IRCs (and implicitly the foreign entities) the same rates now charged the domestic specialized carriers;

(b) If the relief requested in (a) is not granted, the Commission should defer implementation of its Order pending completion of an evidentiary hearing and issuance of a final decision thereafter; and

(c) If the relief requested in (a) and (b) is not granted, the Commission should defer implementation of its Order pending completion of an oral argument *en banc* which was requested in WUI's Petition.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: May 5, 1977

CERTIFICATE OF SERVICE

I, Diane A. DiNoia, hereby certify that the foregoing Comments of Western Union International, Inc. has been sent by United States mail, postage prepaid to the following:

Alfred G. Walton, Esq.
American Telephone & Telegraph Co.
Route 202-206
Bedminster, N.J. 07921

Alfred C. Partoll, Esq.
American Telephone & Telegraph Co.
195 Broadway
New York, New York 10007

Warren Y. Zeger, Esq.
Comsat General Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

Thomas J. Keller, Esq.
Verner, Liipfert, Bernhard,
McPherson & Alexander
Suite 1100
1660 L Street, N.W.
Washington, D.C. 20036
Counsel for French Telegraph Cable Company

Thomas J. O'Reilly, Esq.
Chadbourne, Park, Whiteside & Wolff
1150 17th Street, N.W.
Washington, D.C. 20036
Counsel for Hawaiian Telephone Company

Joseph J. Jacobs, Esq.
ITT World Communications Inc.
67 Broad Street
New York, New York 10004

Francis J. DeRosa, Esq.
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

Roderick A. Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Avenue
Washington, D.C. 20006

/s/ Diane A. DiNoia

Dated: May 5, 1977

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

MARC H. EPSTEIN
Attorney

Telephone (212) 363-58

RECEIVED
MAY 23 1977
LAW DEPARTMENT

May 20, 1977

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC Docket 20542

Dear Mr. Mullins:

Western Union International, Inc. (WUI) hereby requests an extension of time within which the American Telephone and Telegraph Company (AT&T) is required to take action to comply with the Commission's Final Decision and Order, released March 23, 1977, (Order) in this proceeding. AT&T has until May 27, 1977 within which to comply with the Order by removing the alleged unlawful discrimination between the IRCs and domestic satellite and specialized common carriers.

WUI, RCA and ITT have all filed Petitions for Reconsideration in this proceeding, which raise substantial and meaningful questions. In addition RCA has filed a Petition for Stay and AT&T has filed a Petition for Clarification. The Commission has not yet taken action on any of the above pleadings. Unless the May 27, 1977 implementation date is extended, these petitions will, in effect, be denied without ever being accorded consideration by the Commission.

In addition, AT&T, in its Petition for Clarification has raised several issues which it states must be resolved before it can comply with the Order. It is puzzling how AT&T will be able to comply with the Order when the Commission has not yet addressed these issues. Of course, it is possible that these issues have been resolved on an informal basis. If so, WUI requests full disclosure of all meetings between the Commission staff and the AT&T staff concerning this matter. This disclosure should include information as to the nature and content of all such meetings and copies of all documents relating to the meetings. Finally WUI requests an opportunity to rebut or comment on all issues raised at such meetings.

If any _ex parte_ meetings between the staffs of the Commission and AT&T have in fact been held, the propriety of such meetings is, at best, questionable in light of the recent District of Columbia Circuit Court of Appeals decision in _Home Box Office V. FCC_, and in light of the Commission's consistent ignoring and denial of the many IRC requests for either formal hearings or informal conferences at which _all_ parties would have the right to participate.

For all the foregoing reasons, WUI respectfully requests that the May 27, 1977 deadline imposed on AT&T to comply with the Order be extended until June 30, 1977, without prejudice to such further extensions as may be necessary.

Respectfully submitted,

Marc N. Epstein
Marc N. Epstein

MNE: dd
cc: All parties to Docket 20452

C. E. Yates
Rate and Tariff Director

AT&T
American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8155

May 24, 1977

RECEIVED
1977
F.C.C.
OFFICE OF THE SECRETARY

Application No. 8 9

Secretary
Federal Communications Commission
Washington, D. C.

Attention: Common Carrier Bureau

Application is hereby made for Special Permission to make effective on August 25, 1977, on not less than ninety days notice after filing with the Federal Communications Commission, Bell System Operating Companies Tariff F.C.C. No. 4, Overseas Connecting Facilities For Other Common Carriers. For this purpose a waiver of Section 61.38 of the Commission's Rules in accordance with Paragraph 17, Footnote 8 of the Commission's Final Decision and Order in Docket 20452 (FCC 77-176, adopted March 8, 1977) is requested. In addition, a waiver of Sections 61.54 and 61.74 of the Commission's Rules is requested.

This tariff, to be filed on behalf of the Long Lines Department of the American Telephone and Telegraph Company, New Jersey Bell Telephone Company, The Pacific Telephone and Telegraph Company and Southern Bell Telephone Company, will contain, by reference, rates identical to rates in existing tariffs on file with the Commission offering facilities to Other Common Carriers and regulations applicable to the provision of connecting facilities for overseas service. In addition, in an effort to minimize internal tariff administration, the format of this tariff is the same as that utilized for the American Telephone and Telegraph Company, Long Lines Department tariffs and the Bell System Operating Companies Tariff F.C.C. No. 3.

All correspondence and inquiries in connection with this application should be addressed to C. E. Yates, Rate and Tariff Director, Room 30-1570 American Telephone and Telegraph Company, 195 Broadway, New York, New York 10007.

C. E. Yates
KNP

Attachment:
Illustrative Tariff Pages

CC: ERM; JuHB

copy sn FJD 5/27/77

RECEIVED
MAY 26 1977
LAW DEPARTMENT

ITT World Communications Inc.

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-3300

May 25, 1977

Mr. Vincent J. Mullins
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC Docket No. 20452

Dear Mr. Mullins:

ITT World Communications Inc. (ITT Worldcom) wishes to express its support of the request by Western Union International, Inc. (WUI) dated May 20, 1977 for an extension of time from May 27, 1977 to June 30, 1977 within which American Telephone and Telegraph Company (AT&T) is required to comply with the Commission's Final Decision and Order (Final Decision), released March 23, 1977 in the above-referenced proceeding.

The Commission's Final Decision required AT&T to "remove the unlawful discrimination in the provision of entrance and intercity facilities as between the IRCs and the DSCCs and SCCs" (para. 25, p. 13). ITT Worldcom, WUI, and RCA Global Communications, Inc. filed petitions requesting reconsideration of the decision which raised substantial questions of law and fact. Moreover, AT&T filed a Petition for Extension of Time in which to comply with the Commission's ruling in addition to a Petition for Clarification because of the complexities involved in furnishing the facilities at issue and the unique nature of the present operating arrangements. Recognizing AT&T's concerns, the Commission granted the Petition for Extension of Time. However, the Petitions for Reconsideration and the Petition for Clarification still await further resolution.

Although petitions of this nature do not act as a stay of the Final Decision, administrative prudence would dictate the continuance of this matter until all questions in this proceeding are adequately and fully considered. If the Commission adheres to its May 27 compliance date and later amends its *Final Decision*, the affected carriers will then be required to make further changes -- most likely at an increased cost and delay -- which will only serve to confuse their customers. And as stated by WUI, "(u)nless the May 27, 1977 implementation date is extended, these petitions will, in effect, be denied without ever being awarded consideration by the Commission."

Accordingly, ITT Worldcom requests that compliance with the Commission's *Final Decision* by AT&T be extended until June 30, 1977.

Respectfully submitted,

Randall B. Lowe
Attorney

RBL/lr
cc: All parties to FCC Docket No. 20452

RCA Global Communications Inc | 60 Broad Street | New York, NY 10004 | Telephone (212) 363-2070

RCA

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Docket No. 20452

ancis J DeRosa
e President and
neral Counsel

Dear Mr. Mullins: May 25, 1977

RCA Global Communications, Inc. (RCA Glōbcom) hereby supports the request of Western Union International, Inc. (WUI) that the Commission further extend the deadline for compliance by the American Telephone and Telegraph Company (AT&T) with the Commission's Final Decision and Order, released March 23, 1977, in this proceeding (Order).

As pointed out by WUI, substantial questions of fact have been raised by AT&T, in its Petition for Clarification, which it appears would have to be addressed by the Commission before AT&T is allowed to proceed irrespective of any ultimate decision by the Commission on the merits of outstanding petitions for reconsideration filed by RCA Glōbcom and others. Since the Commission has apparently not indicated, pursuant to the Sunshine Act requirements, that a decision on the AT&T Petition for Clarification will be forthcoming before May 27, 1977, which is the current date set for AT&T compliance with the Order, a further extension of time to permit resolution of these questions by the Commission would appear to be necessary here.

We note in this connection that the Commission has set RCA Glōbcom's pending Request for Stay for action at its May 26, 1977 open meeting (see Public Notice of May 19, 1977). This letter is submitted without prejudice to RCA Glōbcom's position that a grant of its pending Request for Stay of enforcement of the Order in its entirety is required as a matter of law.

Respectfully submitted

Francis J De

cc: Mr. Walter R. Hinchman)
Philip V. Permut, Esq.) Common Carrier Bureau
Ruth V. Reel, Esq.)

All parties to Docket No. 20452

bc: Messrs. Murphy, Ende, Brady/Taylor, Hepburn, Tuft, Schwamberger

290

TO: MARC EPSTEIN

Enclosed are document(s) you requested.

FM: Henry G. Catucci, Vice President
WUI, Inc., Washington, D. C.

9510

MAIL BRANCH
MAY 2[illegible] 1977
SIGNED BY ABOVE
MAILED BY

May 25, 1977

American Telephone and Telegraph Company
195 Broadway
New York, New York 10007

S.P. No. 8372

Attention: Mr. C. E. Yates
Rate and Tariff Director

2

Gentlemen:

Special Permission No. 8372 grants the authority requested in your Application No. 8 dated May 24, 1977 for the reasons and to the extent specified therein to file on not less than ninety day's notice the Bell System Operating Companies Tariff F.C.C. No. 4 providing for rates by reference to Tariff F.C.C. No. 3, and regulations applicable for overseas connecting facilities for other common carriers.

For this purpose, the provisions of Sections 61.33 and 61.74 of the Commission's Rules are waived. In addition, Sections 61.16, 61.54, 61.112 and 61.115 are waived in order that the tariff may be filed in the format indicated.

The granting of this request is not to be construed as approval by the Commission of the proposed filing and is made without prejudice to any action which the Commission may take with respect thereto.

Sincerely yours,

Ruth V. Reel
Chief, Tariff Division
for Chief, Common Carrier Bureau

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AT&T

C. E. Yates
Rate and Tariff Director

American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8155

May 26, 1977

Transmittal No. 5

Secretary
Federal Communications Commission
Washington, D.C. 20554

Attention: Common Carrier Bureau

The accompanying tariff material is sent to you for filing in compliance with the Communications Act of 1934, as amended, in response to the Federal Communications Commission's Final Decision and Order in Docket 20452 (FCC 77-176) adopted March 8, 1977, and is issued to become effective August 25, 1977. The material, filed under authority of Special Permission No. 8372 of the Federal Communications Commission, consists of Bell System Operating Companies Tariff F. C. C. No. 4, Overseas Connecting Facilities for Other Common Carriers, as indicated on the following check sheet:

Bell System Operating Companies Tariff F. C. C. No. 4 - Original Page 1

This tariff, filed on behalf of the Long Lines Department of the American Telephone and Telegraph Company, New Jersey Bell Telephone Company, the Pacific Telephone and Telegraph Company and Southern Bell Telephone Company, each of which is an issuing carrier, contains the rates and regulations applicable to the provision of facilities by the Telephone Company between specified points, which are located in different exchanges, to Other Common Carriers authorized by the Federal Communications Commission to provide overseas telecommunications services, where one such specified point is an overseas cable station, radio site or satellite earth station utilized by the Telephone Company in the provision of its authorized overseas services and the other specified point is an operating center of such a carrier in the conterminous United States. These rates and regulations are also applicable to the portion within the Unites States of facilities which are provided between an operating center of such an Other Common Carrier and a point of connection with facilities extending beyond the boundaries of the United States which are connected to facilities furnished by a Foreign Administration in Canada which, in turn, are connected to such overseas cable stations, radio sites or satellite earth stations.

Two point Voice Grade, Voice Grade Data, 50 kbps Data and 56 kbps Data Facilities are offered. The rates for facilities with terminal points located in different states and for the portion within the United States of faclities extending beyond the boundary of the United States which are connected to facilities furnished by a Foreign Administration in Canada, are those specified in the American Telephone and Telegraph Company, Long Lines Department Tariff F. C. C. No. 266. The rates for facilities with terminal points located within the same state are those specified in the appropriate Bell System Operating Company F. C. C. Tariff, Facilities for Other Common Carriers, e.g., The Pacific Telephone and Telegraph Company Tariff F. C. C. No. 126.

It is appropriate that Overseas Connecting Facilities be offered and administered under the tariff being filed herewith rather than under existing OCC facility tariffs because of the nature of the facilities involved. Such facilities are provided in a manner which is consistant with and particularly related to the provision of overseas communications. In order to provide its authorized overseas services, the Bell System is not only responsible for installing, engineering and operating its own overseas facilities, but it must also coordinate with COMSAT and Foreign Administrations whose overseas facilities are used to provide overseas communications services. Thus, engineering standards are established and operating practices adopted, in the interest of international comity, to conform with International Telegraph and Telephone Consultative Committee (CCITT) recommendations.

It has been in the public interest, therefore, to engineer these overseas facilities, in cooperation with COMSAT and Foreign Administrations, so that voice grade connections to these facilities may be accomplished, as appropriate, at overseas cable stations, radio sites, satellite earth stations or at other than these locations. For example, satellite facilities to England, via the Etam, West Virginia satellite earth station, may terminate at voice grade frequency at Pittsburgh and London and route through the earth stations at high frequency. In order to meet CCITT standards, tests are conducted between Pittsburgh and London, rather than at the earth stations. At present, when the Telephone Company furnishes an International Record Carrier a facility to Etam for extension by COMSAT to London (in the manner previously described), it would follow CCITT procedures and perform overall tests with the Foreign Administration. Underseas cables are sometimes engineered in a similar fashion and similar testing procedures are adhered to. However, there will be charges for testing, maintenance or repair of overseas connecting facilities which connect to facilities of a Foreign Administration when such work is in addition to the normal effort required to test, maintain or repair facilities provided solely by the Telephone Company. The rate will be the same as that specified in Tariff F. C. C. No. 266, or in the appropriate Bell System Operating Company F. C. C. Facility Tariff, for Testing and Maintenance with Other Telephone Companies.

When facility conditions permit, Tariff F. C. C. No. 4 allows a carrier to create additional communications channels within or below the voice frequency band and such a carrier may, in accordance with regulations set forth in the tariff, allow other carries authorized to provide overseas telecommunications services to use such channels.

The offering of 56 Kbps Data Facilities where one terminal point is an overseas cable station or satellite earth station utilized by the Telephone Company in the provision of its authorized overseas services is being transferred from Tariff F. C. C. No. 266 to Tariff F. C. C. No. 4. In line with this change, termination liability for Special Construction required at Andover, Me. to provide a 56 kbps Data Facility to Western Union International, Inc. between Washington, D. C. and Andover, Me. is being transferred from Tariff F. C. C. No. 266 to Tariff F. C. C. No. 4. (See American Telephone and Telegraph Company, Long Lines Department's Transmittal No. 12758).

Existing agreements for the provision of facilities between operating centers of International Record Carriers and overseas cable heads, radio sites or satellite earth stations utilized by the Telephone Company in the provision of its authorized overseas services will be terminated, pursuant to their terms, upon the effectiveness of Tariff F. C. C. No. 4 and the revisions to Tariff F. C. C. No. 266. In addition, existing agreements for the provision of facilities between operating centers of International Record Carriers and between such operating centers and locations other than overseas cable heads, radio sites or satellite earth stations utilized by the Telephone Company in the provision of its authorized overseas services, will also be terminated pursuant to their terms. These facilities will be provided under Tariff F. C. C. No. 266 or the appropriate Bell System Operating Company F. C. C. Facility Tariff.

On April 25, 1977, AT&T filed a "Petition for Clarification" in response to the Commission's Final Decision and Order in Docket 20452 which described a number of unique situations which may not have been contemplated by the Commission. Pending such clarification, the material filed herein does not provide for these situations.

Acknowledgement and date of receipt of this filing are requested. A duplicate letter of transmittal is attached for this purpose.

All correspondence and inquiries in connection with this filing should be addressed to Mr. C.E. Yates, Rate and Tariff Director, Room 30-1570, American Telephone and Telegraph Company, 195 Broadway, New York, N.Y. 10007.

C E Yates

Attachments:

Duplicate Letter
Tariff Pages
Copy of Letter and Pages sent to:
Commercial Contractor

BELL SYSTEM OPERATING COMPANIES

Issued: May 27, 1977

TARIFF F.C.C. NO. -
Original Title Page
Effective: August 25, 1977

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

REGULATIONS AND SCHEDULE OF CHARGES

Applying to the provision, to Other Common Carriers authorized by the Federal Communications Commission to furnish overseas services, of (1) overseas connecting facilities between specified points which are located in different exchanges, which are located in two different states, where one point (A) is a satellite earth station, radio site or overseas cable station utilized by the Telephone Company in the provision of its authorized overseas services or (B) is a point of connection with facilities provided by an other telephone company which connect to such earth stations, radio sites or cable stations, (2) the portion within the United States of overseas connecting facilities which are provided to a point of connection with facilities extending beyond the boundaries of the United States which are furnished by a Foreign Administration and which connect to such earth stations, radio sites or cable stations and (3) overseas connecting facilities between specified points which are located in different exchanges, which are located within the same state, where one point (A) is a satellite earth station, radio site or overseas cable station utilized by the Telephone Company in the provision of its authorized overseas services or (B) is a point of connection with facilities provided by an other telephone company which connects to such earth stations, radio sites or cable stations where such specified points are located within the operating territories of the Issuing Carriers, listed following:

ISSUING CARRIERS

American Telephone & Telegraph Company Long Lines Department Bedminster, New Jersey 07921	By J. F. Healy, Administrator Rates and Tariffs
New Jersey Bell Telephone Company 540 Broad St., Newark, New Jersey 07101 For the State of: New Jersey	By B. M. Hartnett, Jr., Vice President and General Counsel
Pacific Telephone and Telegraph Company, The 140 New Montgomery St., San Francisco, California 94105 For the State of: California	By F. M. Widener, Assistant Vice President
Southern Bell Telephone and Telegraph Company P.O. Box 2211, Atlanta, Georgia 30301 For the State of: Florida	By Boyd M. Guttery, Assistant Vice President

Facilities are provided for the transmission of intelligence by electrical impulse, principally by means of wire, radio or a combination thereof.

All material contained herein is filed in compliance with the Final Decision and Order of the Federal Communications Commission in Docket No. 20452 adopted March 3, 1977 under authority of Special Permission No. [illegible] of the Federal Communications Commission.

Printed in U.S.A.

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

CHECK SHEET

Pages 1 to 19, inclusive of this tariff are effective as of the date shown.

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

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OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

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Issued: May 27, 1977

Effective. August 25, 1977

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

1. APPLICATION OF TARIFF

1.1 This tariff contains regulations, rates and charges applicable to facilities provided by the Telephone Company to Other Common Carriers authorized by the Federal Communications Commission to furnish overseas services. This tariff does not apply to services offered by the Telephone Company.

1.2 Regulations, rates and charges as specified in this tariff apply to facilities provided to OCCs only and shall not serve as a substitute for OCC tariff offerings of services to their patrons. The provision of such facilities by the Telephone Company as set forth in this tariff does not constitute a joint undertaking with the OCC for the furnishing of any service.

1.3 Whenever facilities provided by the Telephone Company under this tariff are connected to facilities provided by one or more other telephone companies or Foreign Administrations, the regulations, rates and charges of such other telephone companies or Foreign Administrations apply for the facilities provided by the other telephone company or Foreign Administration. All arrangements for facilities provided by an other telephone company or Foreign Administration shall be made by the OCC directly with the other telephone company or Foreign Administration involved.

2. REGULATIONS

2.1 Undertaking of the Telephone Company

2.1.1 Scope

(A) Facilities provided to an OCC under this tariff may be connected to other facilities used by the OCC for the purpose of extending such other facilities of the OCC between certain locations and thereby constitute a portion of the end-to-end service furnished by the OCC to its patrons.

(B) The Telephone Company does not undertake to transmit messages or offer any telecommunication services under this tariff.

(C) The Telephone Company shall be responsible only for the installation, operation and maintenance of its facilities. Telephone Company facilities are not represented as adapted to the use of other than Telephone Company provided equipment or services. The responsibility of the Telephone Company shall be limited to the provision of facilities under this tariff and to the maintenance and operation of such facilities in a proper manner.

(D) Facilities are provided 24 hours daily, seven days per week.

2.1.2 Limitations

(A) None of the provisions of this tariff shall apply or extend directly to any patron of the OCC. All orders for facilities to be provided under this tariff shall be made only by the OCC.

(B) The OCC may not assign or transfer the use of facilities provided under this tariff except, where there is no interruption of use or relocation of the facilities, such assignment or transfer may be made to:

(1) another OCC, whether an individual, partnership, association or corporation, provided the assignee or transferee assumes all outstanding indebtedness for such facilities, and the unexpired portion of the minimum period and the termination liability applicable to such facilities, if any; or

(2) a court appointed receiver, trustee or other person acting pursuant to law in bankruptcy, receivership, reorganization, insolvency, liquidation or other similar proceedings, provided the assignee or transferee assumes the unexpired portion of the minimum period and the termination liability applicable to such facilities, if any.

In all cases of assignment or transfer, the written acknowledgement of the Telephone Company is required prior to such assignment or transfer which acknowledgement shall be made within 15 days from the receipt of notification. All regulations and conditions contained in this tariff shall apply to such assignee or transferee.

2.1.3 Liability

(A) The Telephone Company's failure to provide or maintain facilities under this tariff shall be excused by labor difficulties, governmental orders, civil commotions, acts of God and other circumstances beyond the Telephone Company's reasonable control, subject to the interruption allowance provisions of 2.4.4 following.

(B) The liability of the Telephone Company for damages arising out of delays in installation or restoration of facilities or out of mistakes, omissions, interruptions, or errors of defects in transmission occurring in the course of providing facilities shall in no event exceed the amount of the allowance, if any, available under 2.4.4 following. There shall be no liability to the Telephone Company for damages arising out of the fault of facilities or equipment furnished by other than the Telephone Company or caused by the negligence of other than the Telephone Company.

(C) The Telephone Company is not liable for any act or omission of the OCC in the furnishing of its service.

(D) No license under patents is granted by the Telephone Company to the OCC or shall be implied or arise by estoppel in the OCC's favor with respect to any circuit, apparatus, system or method used by the OCC in connection with any facilities provided under this tariff. With respect to claims of patent infringement made by third persons, the Telephone Company will defend, indemnify, protect and save harmless the OCC from and against all claims arising out of the use by the OCC of facilities provided under this tariff.

(E) The Telephone Company shall reimburse the OCC for damages to premises or equipment of the OCC or others resulting from the provision of facilities by the Telephone Company on such premises or by the installation or removal thereof caused by the negligence or willful act of the Telephone Company.

2. REGULATIONS (Cont'd)

2.1 Undertaking of the Telephone Company (Cont'd)

2.1.4 Provision of Facilities

The Telephone Company, to the extent that such facilities are or can be made available with reasonable effort and after provision has been made for the Telephone Company's exchange and message telecommunications services, will provide to the OCC upon reasonable notice facilities as specified in (A) through (D) following at rates and charges specified in 4. following.

(A) Voice Grade Facilities

two point effective four wire voice grade facilities between (1) an OCC terminal location and an overseas cable station, radio site or satellite earth station utilized by the Telephone Company in the provision of its authorized overseas services, (2) an OCC Operating Center and a point of connection with a facility provided by an other telephone company, (3) an OCC Operating Center within the conterminous United States and International Boundary Points, to Canada (as specified in the American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. [illegible]). Voice grade facilities may, at the request of the OCC, be conditioned in order to meet one of the sets of conditioning characteristics specified in 3.1.2 following.

(B) Voice Grade Data Facilities

two point effective four wire voice grade data facilities between the points specified in (A) preceding. Voice grade data facilities may, at the request of the OCC, be conditioned in order to meet one of the sets of conditioning characteristics specified in 3.1.2 following or the conditioning characteristics specified in 3.2.2 following.

(C) 50 kbps Data Facilities

two point 50 kbps data facilities between the points specified in (A) preceding.

(D) 56 kbps Data Facilities

two point 56 kbps data facilities arranged to accommodate the transmission of either sequential synchronous bipolar data signals or sequential synchronous data signals conforming to the International Telegraph and Telephone Consultative Committee (CCITT) V.35 specifications between the points specified in (A) preceding.

2.1.5 Special Construction

Subject to the agreement of the Telephone Company, special construction of facilities as provided in 2.1.4 preceding may be undertaken at the request of the OCC to meet the needs of the OCC. Special construction is that construction undertaken:

(A) where facilities are not presently available, and there is no other requirement for the facilities so constructed,
(B) of a type other than that which the Telephone Company would normally utilize in the furnishing of its services,
(C) over a route other than that which the Telephone Company would normally utilize in the furnishing of its services,
(D) in a quantity greater than that which the Telephone Company would normally construct to serve the OCC's facility needs,
(E) on an expedited basis,
(F) on a temporary basis until permanent facilities are available,
(G) involving abnormal costs, or
(H) in advance of its normal construction.

Special construction charges will be determined as described in 4.3 following.

2.1.6 Installation and Termination of Facilities

The facilities provided under this tariff (A) will include any entrance cable or drop wiring and wiring or cable within a building necessary to terminate the facility at points reasonably situated so as to serve OCC terminal locations and (B) will be installed by the Telephone Company to such points of termination. Wiring to apparatus or facilities of the OCC shall be furnished by the OCC from such a point of termination.

2.1.7 Provision of Facility Make-Up

The Telephone Company will provide to the OCC the make-up of the facilities provided under this tariff to enable the OCC to design its overall service.

2.1.8 Changes and Substitutions

The Telephone Company may, where such action is reasonably required in the operation of its business, (A) substitute, change or rearrange any telephone plant used in providing facilities under this tariff, including but not limited to, (1) substitution of different wire pairs, (2) substitution of carrier or derived facilities for wire pairs and (3) substitution of wire pairs for carrier or derived facilities, (B) change minimum network protection criteria, (C) change operating or maintenance characteristics of facilities or (D) change operation or procedures of the Telephone Company. In case of any such substitution, change or rearrangement, the facility parameters will be within the range as set forth in 3. following. The Telephone Company shall not be responsible if any such substitution, change or rearrangement renders any OCC furnished service obsolete or requires modification or alteration thereof or otherwise affects their use or performance. If such substitution, changes or rearrangements materially affect the operating characteristics of the facility, the OCC will be given adequate notice in writing. Reasonable time will be allowed for any redesign and implementation required by the change in operating characteristics.

2. REGULATIONS (Cont'd)

2.1 Undertaking of the Telephone Company (Cont'd)

2.1.9 Discontinuance and Refusal of Facilities

(A) Unless the provisions of 2.5.4(B) following apply, if the OCC fails to comply with the provisions of 2.2, 2.3.3, 2.3.5, 2.4, 2.5.1, 2.5.2, 2.5.3, or 2.7.1 following including any payments to be made by it on the dates or at the times herein specified, and fails within thirty (30) days after written notice by certified mail from the Telephone Company to an officer of the OCC to correct such non-compliance, the Telephone Company may discontinue the provision of the facilities involved. In case of such discontinuance, all applicable charges, including termination charges, shall become due.

(B) If the OCC repeatedly fails to comply with the provisions of this tariff in connection with the provision of a facility or group of facilities, and fails to correct such course of action after notice as set forth in (A) above, the Telephone Company may refuse applications for additional facilities in the same exchange or exchanges as the facilities involved are provided until the course of action is corrected.

2.1.10 Charge for Quotation

A request for a quotation of charges for the provision of any facility for which the rates and charges are determined on an individual case basis will be subject to a special quotation charge for the direct administrative and engineering costs associated with the preparation of that particular quotation. The amount of such charges will be credited to the account of the OCC when an order for the facilities is received within 90 days of the quotation and the facilities are provided.

2.2 Use

2.2.1 Purpose

(A) Facilities provided under this tariff shall be used by the OCC only in furnishing such common carrier communications services as it may be authorized by the Federal Communications Commission to provide and for operational purposes directly related to the furnishing of such services of the OCC. Operational purposes are limited to testing and maintenance of circuits, demonstration and experimental services and spare facilities. Telephone Company telecommunications services required by the OCC for its administrative use are furnished under other applicable tariffs of the Telephone Company.

(B) Where facility conditions permit, the OCC may use the entire transmission capability of a facility provided under this tariff as a single channel or create additional communication channels within or below the voice frequency band. When an OCC creates additional communications channels below the voice frequency band, such channels may be utilized by another OCC in the provision of its authorized services. When an OCC creates additional communications channels for other OCCs, the OCC creating the additional channels shall be responsible for the payment of all charges and compliance with all regulations concerning facilities provided under this Tariff.

Sharing permitted

(C) The Telephone Company does not warrant that its facilities meet standards other than those set forth in 3. following.

2.2.2 Unlawful Use

The facilities provided under this tariff shall not be used for an unlawful purpose.

2.3 Obligations of the Other Common Carrier

2.3.1 Damages

The OCC shall reimburse the Telephone Company for damages to facilities of the Telephone Company provided under this tariff caused by the negligence or willful act of the OCC or a patron of the OCC or resulting from improper use of the Telephone Company facilities, or due to malfunction of any facilities or equipment provided by other than the Telephone Company. The Telephone Company will, upon reimbursement for damages, cooperate with the OCC in prosecuting a claim against the person causing such damage and the OCC shall be subrogated to the right of recovery by the Telephone Company for the damages to the extent of such payment.

2.3.2 Theft

The OCC shall reimburse the Telephone Company for any loss through theft of facilities provided under this tariff on the OCC's premises.

2. REGULATIONS (Cont'd)

2.3 Obligations of the Authorized Common Carrier (Cont'd)

2.3.3 Equipment Space and Power

The OCC shall furnish or arrange to have furnished to the Telephone Company at no charge, equipment space and electrical power required by the Telephone Company to provide facilities under this tariff at the points of termination of such facilities. The selection of ac or dc power shall be mutually agreed to by the OCC and the Telephone Company. The OCC shall also make necessary arrangements in order that the Telephone Company will have access to such spaces at reasonable times for installing, inspecting, repairing or removing facilities of the Telephone Company.

2.3.4 Protective Apparatus

The OCC shall install and bear the cost, if any, of such additional facilities or protective apparatus which, according to accepted telecommunications industry standards, are required to be installed because of the particular use or hazardous location of the facilities provided under this tariff.

2.3.5 Inspection of Facilities

The OCC shall allow the Telephone Company to inspect at reasonable times any facilities or equipment provided by other than the Telephone Company required in accordance with 2.3.4 preceding and [illegible] following which are associated with the facilities provided under this tariff to determine if such installation complies with such Telephone Company requirements

2.3.6 Design of Services

Subject to the provisions of [illegible] preceding, the OCC shall be solely responsible at its expense for the overall design of its services and for any redesigning or rearrangement of its services which may be required because of changes in facilities, operations or procedures of the Telephone Company, minimum network protection criteria or operating or maintenance characteristics of the facilities.

2.3.7 References to Telephone Company

The OCC may advise its patrons that certain facilities are provided by the Telephone Company in connection with the service the OCC furnishes to its patrons; however, the OCC shall not represent that the Telephone Company jointly participates in the OCC's services.

2.3.8 Claims and Demands for Damages

(A) With respect to claims of patent infringement made by third persons the OCC shall defend, indemnify, protect and save harmless the Telephone Company from and against all claims arising out of the combining with, or use in connection with, the facilities provided under this tariff, any circuit, apparatus, system or method provided by the OCC or its patrons.

(B) The OCC shall defend, indemnify and save harmless the Telephone Company from and against suits, claims, and demands by third persons arising out of the construction, installation, operation, maintenance, or removal of the OCC's circuits, facilities, or equipment connected to the Telephone Company's facilities provided under this tariff including, without limitation, Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the OCC's circuits, facilities or equipment, and proceedings to recover taxes, fines, or penalties for failure of the OCC to obtain or maintain in effect any necessary certificates, permits, licenses, or other authority to acquire or operate the facilities provided under the tariff; provided, however, the foregoing indemnification shall not apply to suits, claims, and demands to recover damages for damage to property, death, or personal injury unless such suits, claims or demands are based on the tortious conduct of the OCC, its officers, agents or employees.

2.4 Payment Arrangements and Credit Allowances

2.4.1 Payment of Charges and Deposits

(A) Where the provision of facilities involves an unusual investment, an OCC may be required to make payment in advance of such portion of the estimated cost of the installation or construction as is to be borne by it. The amount of the advance payment will be credited to the OCC's account as applying to the indebtedness of the OCC for the facilities provided.

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

2. REGULATIONS (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment of Charges and Deposits (Cont'd)

(B) The Telephone Company may, in order to safeguard its interests, require an OCC to make a [illegible] at any time after the provision of a facility to be held by the Telephone Company as a guarantee of the payment of charges. Such deposit may not exceed the charges for the facility for a two month period plus the amount of any termination charges [illegible]table to the facility. The fact that a deposit has been made in no way relieves [illegible] from complying with the Telephone Company's regulations as to advance payments [illegible] prompt payment of bills. At such time as the provision of the facilities to [illegible] terminated, the amount of the deposit will be credited to the OCC's account [illegible] credit balance which may remain will be refunded. At the option of the Telephone [illegible] a deposit may be refunded or credited to the OCC at any time prior to the [illegible] of the provision of the facilities to the OCC. In case of a cash deposit, for the [illegible] the deposit is held by the Telephone Company, the OCC will receive simple interest at the rate of 6% per annum, unless a different rate has been established by the appropriate legal authority within the state.

(C) The Telephone Company shall bill all charges incurred by and credits due to, the OCC under this tariff attributable to facilities established or discontinued during the preceding billing period and in advance for all facilities to be provided during the ensuing billing period. Such bills are due when rendered. Adjustments for quantities of facilities established or discontinued in any billing period beyond the minimum period as set forth in 2.4.2 following will be prorated to the number of days or major fraction of days based on a 30 day month. The Telephone Company will, upon request, furnish such detailed information as may reasonably be required for verification of any bill.

2.4.2 Minimum Period

The minimum period for which facilities are provided and for which charges are applicable is one month except for:

(A) facilities provided as set forth in 2.1.4 (C) and (D) preceding, the minimum period is six months and

(B) facilities provided as set forth in 2.1.5 preceding.

When a facility is discontinued prior to the expiration of the minimum period, charges are applicable for the remaining portion of the minimum period, whether the facility is used or not, and will be based on the rates for the facility in effect at the time of discontinuance.

2.4.3 Cancellation of Application for Facilities

(A) Installation or special construction of facilities is considered to have started when the Telephone Company incurs any cost in connection therewith or in preparation thereof which would not otherwise have been incurred, including, but not limited to, preliminary engineering, orders to suppliers and other similar items of cost.

(B) Where the OCC cancels an application for facilities prior to the start of installation or special construction of such facilities, no charges shall apply.

(C) Where installation of facilities, other than those involving special construction, has been started prior to the cancellation, the charges specified in (1) or (2) following, whichever is lower, shall apply.

(1) A charge equal to the costs incurred in such installation, less estimated net salvage. Such charge is determined as detailed in (F) following.

(2) The charge for the minimum period of facilities ordered by the OCC as set forth in 2.4.2 preceding.

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

2. REGULATIONS (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.3 Cancellation of Application for Facilities (Cont'd)

(D) Where special construction of facilities has been started prior to the cancellation and to the extent the Telephone Company has another use for the specially constructed facilities, no charge applies.

(E) Where special construction of facilities has been started prior to the cancellation, and to the extent the Telephone Company has no other use for the specially constructed facilities, a charge equal to the costs incurred in the special construction prior to the date of cancellation, less estimated net salvage, applies. Such charge is determined as detailed in (F) following.

(F) Charges applicable as specified in (C) (D) and (E) preceding shall include the nonrecoverable cost of equipment and material ordered, provided or used, plus the nonrecoverable cost of installation and removal including the costs of engineering, labor, supervision, transportation, rights-of-way and other associated costs.

2.4.4 Allowance for Interruptions

In case of any interruption to any facility, other than those provided under 2.1.5 preceding, allowance for the period of interruption, if not due to the negligence of the OCC or its patron, shall be as follows:

(A) For voice grade and voice grade data facilities, no credit shall be allowed for an interruption of less than 30 minutes. The OCC shall be credited for an interruption of 30 minutes or more at the rate of 1/1440 of the monthly charge for the facility for each period of 30 minutes or major fraction thereof that the interruption continues from the time of notice to the Telephone Company that an interruption has occurred.

(B) For 50 kbps data and 56 kbps data facilities, no credit shall be allowed for an interruption of less than 2 hours. The OCC shall be credited for an interruption of 2 hours or more at the rate of 1/720 of the monthly charge for the facility for each hour or major fraction thereof that an interruption continues from the time of notice to the Telephone Company that an interruption has occurred.

No credit for an interruption or a group of interruptions resulting from a common cause shall be made of amounts less than one dollar. When a facility includes more than one communications path, the interruption allowance applies to the path interrupted. A credit allowance is not applicable for any period during which the OCC or its patron fails to afford access to the facilities provided by the Telephone Company for the purpose of investigating and clearing troubles.

2.5 Operation and Maintenance

2.5.1 Maintenance of Facilities

The facilities provided under this tariff shall be maintained by the Telephone Company. The OCC or others may not rearrange, move, disconnect, remove or attempt to repair any equipment or facilities provided by the Telephone Company except with the written consent of the Telephone Company. The OCC shall maintain all apparatus and equipment provided by it. The Telephone Company shall not be responsible to patrons of the OCC for the end-to-end service of which the facilities provided under this tariff are part.

2.5.2 Availability for Testing

The facilities provided under this tariff shall be available to the Telephone Company at times mutually agreed upon in order to permit the Telephone Company to make tests and adjustments appropriate for maintaining the facilities in satisfactory operating condition. Such tests and adjustments shall be completed within a reasonable time. No credit will be allowed for any interruptions involved during such tests and adjustments.

2.5.3 Balance

All signals for transmission over the facilities provided under this tariff shall be delivered by the OCC balanced to ground.

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

2. REGULATIONS (Cont'd

2.5 Operation and Maintenance (Cont'd)

2.5.4 Interference or Impairment

(A) The characteristics and methods of operation of any circuits, facilities or equipment provided by other than the Telephone Company and associated with the facilities provided under this tariff shall not interfere with or impair service over any facilities of the Telephone Company or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carried over their facilities or create hazards to the employees of any of them or the public.

(B) If such characteristics or methods of operation are not in accordance with (A) preceding, the Telephone Company will, where practicable, notify the OCC that temporary discontinuance of the use of a facility may be required, however, where prior notice is not practicable, nothing contained herein shall be deemed to preclude the Telephone Company's right to temporarily discontinue forthwith the use of a facility if such action is reasonable in the circumstances. In case of such temporary discontinuance the OCC will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance allowance for interruption of facilities as set forth in 2.4.4 preceding is not applicable.

2.6 Definitions

Certain terms are defined as follows:

Bell System Operating Companies

The term "Bell System Operating Companies" denotes those Bell System Companies, other than the Long Lines Department of the American Telephone and Telegraph Company, listed as Issuing Carriers on the Title Page of this Tariff.

Central Office

The term "Central Office" denotes a local Telephone Company Operating unit by means of which a telephonic communication is furnished for customers within a specified area under contracts for exchange service.

Communications System

The term "Communications System" denotes channels and other facilities which are capable, when not connected to overseas connecting facilities, of communications between terminal equipment provided by other than the Telephone Company or Telephone Company stations.

Exchange

The term "Exchange" denotes a unit established by the Telephone Company for the administration of communications service in a specified area which usually embraces a city, town or village and its environs. It consists of one or more central offices together with the associated plant used in furnishing communications service within that area.

Network Control Signaling

The term "Network Control Signaling" denotes the transmission of signals used in the telecommunications system which perform functions such as supervision (control, status, and charge signals), address signaling (e.g. dialing), calling and called number identifications, audible tone signals (call progress signals indicating re-order or busy conditions, alerting, coin denominations, coin collect and coin return tones) to control the operation of switching machines in the telecommunications system.

Other Common Carrier (OCC)

The term "Other Common Carrier" denotes Specialized Common Carriers, Domestic and International Record Carriers and Domestic Satellite Carriers engaged in providing such private line voice, data or video services or other services as such carriers may be authorized by the Federal Communications Commission to provide.

2.6 Definitions (Cont'd)

OCC Operating Center

The term "OCC Operating Center" denotes a location (A) owned or leased by the OCC over which the OCC has control and provides security, (B) at which intercity facilities leased by the OCC terminate, (C) from which the OCC intends to furnish and administer services to multiple parties in a specified geographical area, (D) at which the OCC has the equipment and capability to test the services provided and (E) at which the OCC has a regularly scheduled work force to accomplish such testing.

Telephone Company

The term "Telephone Company" denotes the Long Lines Department of the American Telephone and Telegraph Company and its Concurring Carriers or a Bell System Operating Company which is an Issuing Carrier of this tariff and its Concurring Carriers.

Other Telephone Company

The term "Other Telephone Company" denotes a company engaged in the business of furnishing public switched network telephone services and which is not a Bell System Operating Company.

Patron

The term "Patron" denotes a subscriber to the services of an Other Common Carrier.

2.7 Connections

2.7.1 Connection to other than Telephone Company Provided Terminal Equipment or Communications Systems

Telephone Company facilities provided under this tariff and used in OCC furnished communications services may be connected to other than Telephone Company provided terminal equipment or communication systems provided that the regulations in (A) through (C) following are met.

(A) When such OCC services using Telephone Company voice grade or voice grade data facilities are terminated in other than Telephone Company provided terminal equipment, channel derivation devices or communications systems, the OCC shall insure compliance with the minimum protective criteria set forth in (1) through (5) following:

(1) Since the facilities provided under this tariff are used in common with Telephone Company services it is necessary in order to prevent excessive noise and crosstalk that the power of the signal applied to the Telephone Company lines be limited. A single valued limit for all applications cannot be specified. Therefore, the power of the signal in the band above 300 Hertz which may be applied by the other than Telephone Company provided equipment at the point of termination will be specified by the Telephone Company for each application to be consistent with the signal power allowed on the telecommunications network.

(2) To protect Telephone Company services from interference at frequencies which are above the band of facilities provided, the Telephone Company will specify the acceptable signal power in the following bands which may be applied by the other than Telephone Company provided equipment or communications system at the point of termination to insure that the input to the Telephone Company facilities shall not exceed the limits set forth below:

- the power in the band from 3,995 Hertz to 4,005 Hertz shall be at least 18 db below the power of the signal as specified in (A)(1) preceding.
- the power in the band from 4,000 Hertz to 10,000 Hertz shall not exceed 16 db below one milliwatt.
- the power in the band from 10,000 Hertz to 25,000 Hertz shall not exceed 24 db below one milliwatt.
- the power in the band from 25,000 Hertz to 40,000 Hertz shall not exceed 36 db below one milliwatt.
- the power in the band above 40,000 Hertz shall not exceed 50 db below one milliwatt.

2.7 Connections

2.7.1 Connection to Other Than Telephone Company Provided Terminal Equipment or Communications Systems (Cont'd)

(A) (Cont'd)

(3) Where there is connection of OCC service by means of the other than Telephone Company provided terminal equipment or communications system to a message telecommunications service or a WATS service, to prevent the interruption or disconnection of a call or interference with network control signaling it is necessary that the signal applied by the other than Telephone Company provided equipment to the interface at no time have energy solely in the 2450 to 2750 Hertz band and when signal power is present in the 2450 to 2750 Hertz band, it must not exceed the power present at the same time in the 800 to 2450 Hertz band.

(4) Where such other than Telephone Company provided equipment and communications system applies signals having components in the frequency spectrum below 300 Hertz, excluding ringing signals, the currents and voltages (including all harmonics and spurious signals) at the interface shall not exceed the limits indicated in (a) through (d) following:

(a) The maximum root-mean-square (rms) value, including dc and ac components, of the current per conductor will not exceed 0.15 ampere.

(b) The magnitude of the peak of the conductor to ground voltage shall not exceed 70 volts.

(c) The conductor to conductor voltage shall be such that the conductor to ground voltage limit in (b) preceding is not exceeded. If the signal source is not grounded, the voltage limit in (b) preceding applies to the conductor to conductor voltage.

(d) The total weighted rms voltage within the band from 50 Hertz to 300 Hertz shall not exceed 100 volts. The total weighted rms voltage is the square root of the sum of the products of the weighting factors for the individual frequency components times the square of the rms voltage of the individual frequency components. The weighting factors are as indicated:

for frequencies between	weighting factor
50 Hertz and 100 Hertz	$f^2/10^4$
100 Hertz and 300 Hertz	$f^{3.3}/10^{6.6}$

where f is the numerical value of the frequency, in Hertz, of the frequency component being weighted.

(5) Where the signal applied by the OCC service will have energy solely in the 2675 to 2750 Hertz band, the OCC shall coordinate the application of such signal with the Telephone Company.

(B) In the case of connection to other than Telephone Company or OCC provided terminal equipment or communications systems, the OCC shall insure compliance with (A) preceding by filing tariff provisions setting forth such minimum protective criteria prior to furnishing service utilizing the facilities provided under this tariff.

(C) The OCC shall also employ any physical protective measures and operating procedures equivalent to those utilized by the Telephone Company in the furnishing of its services to its customers pertaining to connection of customer provided terminal equipment or communications systems to the services of the Telephone Company. In the event that the Telephone Company and the OCC disagree on the necessity for employment by the OCC of physical protective measures in the connection of patron provided terminal equipment or communications sytems to any facilities provided under this tariff, the Telephone Company will save the OCC harmless against any claims by its patrons arising from the employment of such measures as are required by the Telephone Company.

2.7.2 Connection to Telephone Company Services

The OCC's end-to-end services, of which the facilities provided under this tariff are a part, may be connected to the Telephone Company's services pursuant to the terms and conditions of the Telephone Company's service tariffs applicable to such connections.

3. DESCRIPTION OF FACILITIES

3.1 Voice Grade Facilities

A voice grade facility is a communications path between two points comprised of any form or configuration of physical plant capable of and typically used in the telecommunications industry for the transmission of the human voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 hertz and as more particularly described in 3.1.1 and 3.1.2 following.

3.1.1 Effective Four Wire

An effective four wire voice grade facility is a two point facility consisting of two separate one-way electrical paths each capable of accommodating voice grade transmission (one for each direction) having the following characteristics:

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db.

(B) The loss deviation with frequency (from a 1000 Hz reference) shall not exceed
-1 db to +12 db* between 300 and 3000 Hz,
-2 db to +8 db between 500 and 2500 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 1750 microseconds between 800 and 2600 Hz.

(D) The manner in which voice grade facilities provided under this tariff are connected to overseas facilities will be determined jointly by the involved carriers and foreign correspondents.

3.1.2 Conditioning

Voice grade or voice grade data facilities have one of the following sets of characteristics when conditioned. These characteristics are not represented to apply to the entire service furnished by the OCC to its patrons, but only to the facilities provided under this tariff when not connected to the facilities of the OCC or equipment of its patron.

Type C1

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-1 db to +3 db between 1000 and 2400 Hz,
-2 db to +6 db between 300 and 2700 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 1000 microseconds between 1000 and 2400 Hz.

Type C2

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-1 db to +3 db between 500 and 2800 Hz,
-2 db to +6 db between 300 and 3000 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 500 microseconds between 1000 and 2600 Hz, a maximum difference of 1500 microseconds between 600 and 2600 Hz, a maximum difference of 3000 microseconds between 500 and 2800 Hz.

Type C4

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-2 db to +3 db between 500 and 3000 Hz,
-2 db to +6 db between 300 and 3200 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 300 microseconds between 1000 and 2600 Hz, a maximum difference of 500 microseconds between 800 and 2800 Hz, a maximum difference of 1500 microseconds between 600 and 3000 Hz, a maximum difference of 3000 microseconds between 500 and 3000 Hz.

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* Note: "+" means more loss, and "-" means less loss, than at 1000Hz.

3. DESCRIPTION OF FACILITIES (Cont'd)

3.1 Voice Grade Facilities (Cont'd)

3.1.2 Conditioning (Cont'd)

Type C5

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-1.0 db to +3.0 db between 300 and 3000 Hz,
-0.5 db to +1.5 db between 500 and 2800 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 100 microseconds between 1000 and 2600 Hz, a maximum difference of 300 microseconds between 600 and 2600 Hz, a maximum difference of 600 microseconds between 500 and 2800 Hz.

3.2 Voice Grade Data Facilities

3.2.1 A voice grade data facility is a facility of approximate bandwidth of 300 to 3000 Hz suitable for data transmission, remote metering, supervisory control and miscellaneous signaling purposes. Technical characteristics of these facilities will be the same as specified in 3.1.1 and 3.1.2 preceding.

3.2.2 Voice grade data facilities have the following characteristics when D1 conditioned:

Type D1

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The signal to C-notched noise ratio shall be 28 db or greater.

(C) The nonlinear signal to second order distortion shall be 35 db or greater and the nonlinear signal to third order distortion shall be 40 db or greater.

3.3 50 kbps Data Facilities

A 50 kilobit per second data facility is a two point facility consisting of two separate one-way electrical paths (one for each direction) each capable of accommodating sequential synchronous data transmission at the rate of 50 kilobits per second (50 kbps).

3.4 56 kbps Data Facilities

A 56 kbps data facility, capable of accommodating any one of the following, is a two point facility consisting of two separate one-way electrical paths (one for each direction).

- to accommodate the transmission of sequential synchronous bipolar data signals at a rate of 56 kbps. Data signals, including timing and control where provided, exchanged at the interface between equipment provided by other than the Telephone Company and the Telephone Company-provided facility shall be as specified by the Telephone Company. Electrical, mechanical and functional specifications for these interfaces are available from the Telephone Company upon request. No voice grade facility will be provided for control purposes.
- to accommodate the transmission of sequential synchronous data signals at a rate of 56 kbps conforming to the International Telegraph and Telephone Consultative Committee (CCITT) V.35 specifications. No voice grade facility will be provided for control purposes.

4. RATES AND CHARGES

For the purpose of this section, the following regulations apply:

(A) When a facility is provided to a point of connection with an other telephone company or Foreign Administration, such a point of connection is considered as a terminal point for the purpose of determining facility mileage.

(B) When a facility is provided to a point of connection with a Foreign Administration, the rates and charges for such facilities are the same as the rates specified for facilities whose terminal points are located in different exchanges in different states.

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

4. RATES AND CHARGES (Cont'd)

4.1 Facilities

(A) Terminal Points of Facilities Located in Different Exchanges in Different States

Rates and charges for voice grade, voice grade data, 50 kbps data and 56 kbps data facilities provided under this tariff are the same as those rates and charges specified for the same types of facilities in the American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 266.

(B) Terminal Points of Facilities Located in Different Exchanges in the Same State

Rates and charges for voice grade, voice grade data, 50 kbps data and 56 kbps data facilities provided under this tariff are the same as those rates and charges specified for the same types of facilities in the appropriate Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed following:

New Jersey Bell Telephone Company	Tariff FCC No. 33
Pacific Telephone and Telegraph Company, The	Tariff FCC No. 126
Southern Bell Telephone and Telegraph Company	Tariff FCC No. 55

Rates and charges not specified for such facilities in the appropriate Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed preceding, will be developed and filed in that tariff.

4.2 Conditioning

Rates and charges for Types C1, C2, C4, C5 and D1 Conditioning of voice grade or voice grade data facilities are the same as those specified for the same types of conditioning in the appropriate tariff listed under (A) and (B) following:

(A) Terminal Points of Facilities Located in Different Exchanges in Different States

American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 266.

(B) Terminal Points of Facilities Located in Different Exchanges in the Same State

Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed in 4.1 (B) preceding.

Rates and charges not specified for such conditioning in the appropriate Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed in 4.1 (B) preceding, will be developed and filed in that tariff.

4.3 Special Construction

Special construction charges will be determined as described in the appropriate tariff listed under (A) and (B) following.

(A) Terminal Points of Facilities Located in Different Exchanges in Different States

American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 266.

(B) Terminal Points of Facilities Located in Different Exchanges in the Same State

Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed in 4.1(B) preceding.

Rates and charges for special construction of facilities are filed following:

Western Union International, Inc. Construction required at Andover Me., to provide 56 kbps Data Facility between Washington, D.C., and Andover, Me. Nonrecurring charge - $344.00 Maximum Termination Charge $26,100.00 (7 years). (x)

(x) Transferred from the American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 266, Original Page 23.1, which was issued on February 14, 1977, to become effective on February 16, 1977.

5. ADDITIONAL ENGINEERING AND LABOR

5.1 Description of Additional Engineering and Labor

5.1.1 Additional Engineering

Additional engineering is that engineering or engineering consultation requested by the OCC as described in (A) through (D) following. The Telephone Company will notify the OCC that additional engineering charges as specified in 5.2 following will apply before any additional engineering is undertaken.

(A) Design Change or Cancellation

A design change or cancellation is a change or cancellation requested by the OCC, after receipt of the Telephone Company's design.

(B) Engineering Consultation

Engineering consultation is the obtaining of technical advice from the Telephone Company by the OCC not in connection with a specific order, and situations in which the OCC requests the Telephone Company to provide information or to perform a function which will entail additional engineering by the Telephone Company. This does not include inquiries of a short duration where no significant engineering time is required or inquiries associated with OCC facility forecasts.

(C) Expendited Engineering

Expedited engineering is the engineering time required to meet an OCC request for a less than normal engineering design interval.

(D) Engineering of Connections with Other Telephone Companies

Engineering of connections with other telephone companies is the engineering activity of contacting, coordinating and designing with an other telephone company, portions of facilities which connect to facilities provided by an other telephone company.

5.1.2 Additional Labor

Additional labor is that labor requested by the OCC on a given facility as described in (A) through (F) following. The Telephone Company will notify the OCC that additional labor charges as specified in 5.2 following will apply before any additional labor is undertaken.

(A) Overtime Installation

Overtime installation is that Telephone Company installation effort outside regularly scheduled working hours.

(B) Additional Installation Testing

Additional installation testing is that testing performed by the Telephone Company at the time of installation which is in addition to normal preservice acceptance testing.

(C) Overtime Repair

Overtime repair is that Telephone Company maintenance effort performed outside of regularly scheduled working hours.

(D) Stand By

Stand by includes all time in excess of one-half (1/2) hour during which Telephone Company personnel stand by to make coordinated tests on a given facility.

(E) Testing and Maintenance with Other Telephone Companies

Additional testing, maintenance or repair of facilities which connect to facilities of an other telephone company which is in addition to normal effort required to test, maintain or repair facilities provided solely by the Telephone Company.

(F) Other Labor

As agreed by the Telephone Company and the OCC, additional labor not included in (A) through (E) preceding may be undertaken.

5. ADDITIONAL ENGINEERING AND LABOR (Cont'd)

5.1 Description of Additional Engineering and Labor (Cont'd)

5.1.3 Maintenance of Facilities Charge

The OCC shall be responsible for payment of a maintenance of facilities charge for visits by the Telephone Company to the OCC Operating Center or the point of connection with a facility provided by an other telephone company, (A) where the trouble report results from equipment or communications system provided by other than the Telephone Company or the OCC, in which event no credit will be allowed for interruptions involved, or, (B) in the event the trouble is not found to be in the Telephone Company's facilities and the OCC has specifically requested a dispatch of Telephone Company personnel.

5.2 Rates for Additional Engineering and Labor

The OCC shall be responsible for charges for additional engineering and labor when performed by the Telephone Company at the request of the OCC. Such charges are specified in Section 6 of the appropriate tariff listed under (A) and (B) following:

(A) Terminal Points of Facilities Located in Different Exchanges in Different States

American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 266.

(B) Terminal Points of Facilities Located in Different Exchanges in the Same State

Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed in 4.1 (B) preceding.

5.3 Testing and Maintenance with Foreign Administrations

The OCC shall be responsible for charges for additional labor, when performed by the Telephone Company at the request of the OCC, for additional testing, maintenance or repair of facilities which connect to facilities of a Foreign Administration which is in addition to normal effort required to test, maintain or repair facilities provided solely by the Telephone Company. Such charges are the same as those specified for testing and maintenance with other telephone companies in Section 6 of the appropriate tariff listed under (A) and (B) following:

(A) Terminal Points of Facilities Located in Different Exchanges in Different States

American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 266.

(B) Terminal Points of Facilities Located in Different Exchanges in the Same State

Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed in 4.1 (B) preceding.

6. SPECIAL ROUTING OF FACILITIES

6.1 Provision of Special Routing of Facilities

The facilities provided under this tariff are provided over such routes as the Telephone Company may elect.

Special routing is involved, where, in order to comply with requirments specified by the OCC, the Telephone Company provides the facility in a manner which includes one or both of the following conditions:

(A) Where two or more facilities must be provided over not more than two different physical routes.

(B) Where a facility must be provided on a route which avoids specified geographical locations.

Special routing of facilities is available only on facilities described in 3.1 and 3.2 preceding.

6.2 Rates for Special Routing of Facilities

When special routing of facilities is provided to an OCC, the rates for special routing of facilities are the same as those specified for special routing of facilities in the appropriate tariff listed under (A) and (B) following and are in addition to all other charges which may be applicable in accordance with this Tariff.

(A) Terminal Points of Facilities Located in Different Exchanges in Different States

American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 266.

(B) Terminal Points of Facilities Located in Different Exchanges in the Same State

Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed in 4.1 (B) preceding.

Rates and charges not specified for special routing of facilities in the appropriate Bell System Operating Company's "Facilities For Other Common Carriers" tariff, as listed in 4.1 (B) preceding, will be determined and filed in that tariff.

AT&T Long Lines

Bedminster, New Jersey 07921
Room 4C103
Phone (201) 234-8120

J. F. Healy
Administrator Rates
and Tariffs

RECEIVED
OFFICE OF
JUN 1 1977
DIRECTOR
REGULATORY AFFAIRS &
OPERATING ARRANGEMENTS

May 27, 1977

Transmittal No. 12758

Secretary
Federal Communications Commission
Washington, D.C. 20554

Attention: Common Carrier Bureau

The accompanying tariff material is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended, issued by the American Telephone and Telegraph Company, Long Lines Department, and bearing Tariff F.C.C. No. 266, Facilities for Other Common Carriers, effective August 25, 1977. This material consists of tariff pages as indicated on the following check sheet:

Tariff F.C.C. No. 266 - 25th Revised Page 1

This filing deletes the offering of facilities between specified points where one point is an overseas cable station or a satellite earth station utilized by the Telephone Company in the provision of its authorized overseas services. Such facilities will be available, to Other Common Carriers authorized by the Federal Communications Commission to provide overseas services, under Bell System Operating Companies Tariff F.C.C. No. 4, filed May 27, 1977, in response to the Federal Communications Commission's Final Decision and Order pertaining to Docket 20452 (American Telephone and Telegraph Company, Transmittal No. 5).

Special construction rates and charges associated with a 56 kbps Data Facility provided to Western Union International, Inc. between Washington, D.C. and Andover, Me. are also being deleted. They also will be contained in Bell System Operating Companies Tariff F.C.C. No. 4.

Acknowledgment and date of receipt of this filing are requested. A duplicate letter of transmittal is attached for this purpose. All correspondence and inquiries in connection with this filing should be addressed to Mr. J. F. Healy, Administrator Rates and Tariffs, American Telephone and Telegraph Company, Bedminster, N.J., 07921.

J. F. Healy
Administrator Rates and Tariffs
JC

Attachments:
  Duplicate Letter
  Tariff Pages
Copy of Letter and Pages sent to:
Commercial Contractor
Parties to Settlement Agreement, Docket 20099

2. REGULATIONS (Cont'd)

2.1 Undertaking of the Telephone Company (Cont'd)

2.1.4 Provision of Facilities (Cont'd)

(J) Control Connecting Facilities (Cont'd)

(3) Portions of Control Connecting Facilities
those portions of control connecting facilities between (a) a point of connection with a facility provided by an other telephone company and a patron's premises, (b) a point of connection with a facility provided by an other telephone company and a point of connection with the Telephone Company for the transmission of a control signal from a Common Control Switching Arrangement switch having echo suppressor control capability to an echo suppressor which is not provided by the Telephone Company, (c) a point of connection with an other telephone company and an OCC terminal location or (d) two points of connection with facilities provided by an other telephone company or two different such companies.

(K) 56 kbps Data Facilities
two point 56 kbps data facilities arranged to accomodate the transmission of either sequential synchronous bipolar data signals or sequential synchronous data signals conforming to the International Telegraph and Telephone Committee (CCITT) V.35 specifications between the points specified in (A) preceding.

(D)(x)
(D)(x)

2.1.5 Special Construction

Subject to the agreement of the Telephone Company, special construction of facilities as provided in 2.1.4 preceding may be undertaken at the request of the OCC to meet the needs of the OCC. Special construction is that construction undertaken:

(A) where facilities are not presently available, and there is no other requirement for the facilities so constructed,
(B) of a type other than that which the Telephone Company would normally utilize in the furnishing of its services,
(C) over a route other than that which the Telephone Company would normally utilize in the furnishing of its services,
(D) in a quantity greater than that which the Telephone Company would normally construct to serve the OCC's facility needs,
(E) on a expedited basis,
(F) on a temporary basis until permanent facilities are available,
(G) involving abnormal costs, or
(H) in advance of its normal construction.

Special construction charges will be determined as described in 4.4 following.

2.1.6 Installation and Termination of Facilities

The facilities provided under this tariff (A) will include any entrance cable or drop wiring and wiring or cable within a building necessary to terminate the facility at points reasonably situated so as to serve patron's premises or OCC terminal locations and (B) will be installed by the Telephone Company to such points of termination. Wiring to apparatus or facilities of the OCC or its patron shall be furnished by the OCC or its patron from such a point of termination. The Telephone Company, to the extent that such facilities are or can be made available with reasonable effort, will make station wiring available until October 31, 1976. After such date station wiring will be made available in those cases where it is not practicable for the OCC to provide such facilities.

2.1.7 Provision of Facility Make-Up

The Telephone Company will provide to the OCC the make-up of the facilities provided under this tariff to enable the OCC to design its overall service.

2.1.8 Changes and Substitutions

The Telephone Company may, where such action is reasonably required in the operation of its business, (A) substitute, change or rearrange any telephone plant used in providing facilities under this tariff, including but not limited to, (1) substitution of different wire pairs, (2) substitution of carrier or derived facilities for wire pairs and (3) substitution of wire pairs for carrier or derived facilities, (B) change minimum network protection criteria, (C) change operating or maintenance characteristics of facilities or (D) change operation or procedures of the Telephone Company. In case of any such substitution, change or rearrangement, the facility parameters will be within the range as set forth in 3. following. The Telephone Company shall not be responsible if any such substitution, change or rearrangement renders any OCC furnished service obsolete or requires modification or alteration thereof or otherwise affects their use or performance. If such substitution, changes or rearrangements materially affect the operating characteristics of the facility, the OCC will be given adequate notice in writing. Reasonable time will be allowed for any redesign and implementation required by the change in operating characteristics.

(x) No longer applicable. These facilities are now available under Bell System Operating Companies Tariff F.C.C. No. 4, filed May 27, 1977, in response to Federal Communications Commission's Final Decision and Order pertaining to Docket 20452 (FCC 77-176, adopted March 8, 1977).

4. RATES AND CHARGES (Cont'd)

4.4 Special Construction (Cont'd)

4.4.6 Special Construction Rates and Charges

Rates and charges for specially constructed facilities will be filed in this section of the tariff on a case-by-case basis.

(D)(x)
| |
(D)(x)

5. SUPPLEMENTAL FUNCTIONS

5.1 Provision of Supplemental Functions

The Telephone Company, to the extent that such functions are or can be made available with reasonable effort and are consistent with the Telephone Company's normal provision of equipment for its own services, and after provision has been made for the Telephone Company's exchange and message telecommunications services, will provide to the OCC upon reasonable notice, supplemental functions as specified in 5.1.1 through 5.1.3 following, at rates and charges specified in 5.2 following. Such supplemental functions will be provided in association with voice grade connecting or voice grade data connecting facilities terminated in Telephone Company or other telephone company provided station or switching equipment (e.g., PBX, key telephone system, Central Office Centrex or Common Control Switching Arrangement switch.)

(x) No longer applicable. These rates and charges are now contained in Bell System Operating Companies Tariff F.C.C. No. 4, filed May 27, 1977, in response to Federal Communications Commission's Final Decision and Order pertaining to Docket 20452 (FCC 77-176, adopted March 8, 1977).

3. CHANNELS (Cont'd)

3.2 Classification and Rates (Cont'd)

3.2.2 Series [illegible] Channels (Cont'd)

(C) Rates - Monthly Service (Service 7 days per week, 24 hours per day) (Cont'd)

(1) Interexchange Channels

Per airline mile, per month

(a) Schedule I (applies between a pair of Category "A" rate centers)

Mileage	Charge	
1	$ 51.00	
2-14	$ 51.00 + $1.80 for each mile over 1 mile	
15	$ 76.20	
16-24	$ 76.20 + $1.50 for each mile over 15 miles	
25	$ 91.20	
26-39	$ 91.20 + $1.12 [illegible] each mile over 25 miles	
40	$108.00	
41-59	$108.00 + $1.12 f[illegible]h mile over 40 miles	
60	$130.40	
61-79	$130.40 + $1.00 for each mile over 60 [illegible]	(R)
80	$150.40	|
81-99	$150.40 + $1.00 for each mile over 80 miles	|
100	$170.40	|
101-199	$170.40 + $ .50 for each mile over 100 miles	|
200	$220.40	|
201-999	$220.40 + $ .40 for each mile over 200 miles	|
1000	$540.40	|
over 1000	$540.40 + $ .40 for each mile over 1000 miles	(R)

Where one rate center is an international boundary point, charge is as determined above minus $25.00.

(b) Schedule II (applies between a pair of rate centers where one rate center is in Category "A" and the other rate center of the same pair of rate centers is in Category "B")

Mileage	Charge	
1	$ 52.00	
2-14	$ 52.00 + $3.30 for each mile over 1 mile	
15	$ 98.20	
16-24	$ 98.20 + $3.10 for each mile over 15 miles	
25	$129.20	
26-39	$129.20 + $2.00 for each mile over 25 miles	
40	$159.20	
41-59	$159.20 + $1.35 for each mile over 40 miles	
60	$186.20	
61-79	$186.20 + $1.35 for each mile over 60 miles	
80	$213.20	
81-99	$213.20 + $1.35 for each mile over 80 miles	
100	$240.20	
101-199	$240.20 + $ .50 for each mile over 100 miles	(R)
200	$290.20	|
201-999	$290.20 + $ .40 for each mile over 200 miles	|
1000	$610.20	|
over 1000	$610.20 + $ .40 for each mile over 1000 miles	(R)

Where one rate center is an international boundary point, charge is as determined above minus $25.00.

(c) Schedule III (applies between a pair of Category "B" rate centers)

Mileage	Charge	
1	$ 53.00	
2-14	$ 53.00 + $4.40 for each mile over 1 mile	
15	$114.60	
16-24	$114.60 + $3.80 for each mile over 15 miles	
25	$152.60	
26-39	$152.60 + $2.80 for each mile over 25 miles	
40	$194.60	
41-59	$194.60 + $2.10 for each mile over 40 miles	
60	$236.60	
61-79	$236.60 + $1.60 for each mile over 60 miles	
80	$268.60	
81-99	$268.60 + $1.35 for each mile over 80 miles	
100	$295.60	
101-199	$295.60 + $ .68 for each mile over 100 miles	
200	$363.60	
201-999	$363.60 + $ .40 for each mile over 200 miles	(R)
1000	$683.60	|
over 1000	$683.60 + $ .40 for each mile over 1000 miles	(R)

Where one rate center is an international boundary point, charge is as determined above minus $25.00.

320

TO: ROBERT E. CONN
EXECUTIVE VICE PRESIDENT
WESTERN UNION INTERNATIONAL, INC.
ONE WUI PLAZA
NEW YORK, NEW YORK 1004

(2) File: Facilities Agreement Inquiry
Dkt #20452

NO: 710-581-5701

FROM: 710-986-2519 BEDMINSTER, NEW JERSEY

1977 MAY 27 PM 5:25

DEAR MR. CONN:

THIS IS IN REFERENCE TO THE FOLLOWING AGREEMENTS BETWEEN AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND WESTERN UNION INTERNATIONAL, INC.:

1. THE +GENERAL AGREEMENT FOR LEASING OF CIRCUITS+ DATED MAY 9, 1968, AS AMENDED.

2. THE LETTER AGREEMENT DATED NOVEMBER 20, 1968, AS AMENDED, CONCERNING THE LEASING OF GROUP AND SUPER-GROUP BANDWIDTH FACILITIES IN THE CONTINENTAL UNITED STATES.

AT&T HEREBY TERMINATES BOTH OF THE SAID AGREEMENTS EFFECTIVE AUGUST 26, 1977 PURSUANT TO THEIR TERMS. FACILITIES WILL BE AVAILABLE TO YOU UNDER EXISTING TARIFFS OFFERING FACILITIES TO OTHER COMMON CARRIERS AND UNDER BELL SYSTEM OPERATING COMPANIES TARIFF F.C.C. NO. 4 FILED MAY 27 1977 WITH AN EFFECTIVE DATE OF AUGUST 25, 1977.

Telex Western Union International, Inc.

IF YOU HAVE ANY QUESTIONS CONCERNING THE FACILITIES THAT WILL BE AVAILABLE FOLLOWING TERMINATION OF THE AGREEMENTS, PLEASE CALL ROGER HUBBELL (201-234-7877).

VERY TRULY YOURS,

R.B. NICHOLS
VICE PRESIDENT - OVERSEAS
AMERICAN TELEPHONE AND TELEGRAPH COMPANY
LONG LINES DEPARTMENT
BEDMINSTER, NEW JERSEY 07921
PN 05-27-77 L540 EDT

LONG DIST

bcc: RM ←
MNE*
PHS
TJJ
EPON
DHT

(*1--Is this termination consistent with the termination provision of the basic contract?
(
(2--Do you recommend any reply by us such as, for example, AT&T's agreement to extend the terminal date until such time as the tariffs become effective? (if so, please draft the response)

R E. C.

Western Union International WUI International Telex Western Union International, Inc.

77 MAY 27 PM 5:41

TO: ROBERT E. CONN
EXECUTIVE VICE PRESIDENT
322 WESTERN UNION INTERNATIONAL, INC.
ONE WUI PLAZA
NEW YORK, NEW YORK 10004

NO: 710-581-5701

FROM: 710-986-2519 BEDMINSTER, NEW JERSEY

DEAR MR. CONN:

THIS IS IN REFERENCE TO THE LETTER AGREEMENT, AS AMENDED, BETWEEN AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND WESTERN UNION INTERNATIONAL, INC., DATED JANUARY 25, 1966, CONCERNING THE PROVISION OF CHANNELS FOR TELEVISION TRANSMISSION (THE AGREEMENT).

PURSUANT TO PARAGRAPH 11 THEREOF AT&T HEREBY TERMINATES THE AGREEMENT EFFECTIVE JUNE 27, 1977 INSOFAR AS THE AGREEMENT PERTAINS TO THE PROVISION OF LOCAL CHANNELS. LOCAL CHANNELS WILL BE AVAILABLE TO YOU UNDER EXISTING TARIFFS. WE ARE NOT TERMINATING THE AGREEMENT INSOFAR AS IT PERTAINS TO THE PROVISION OF STATION CONNECTIONS AND INTEREXCHANGE CHANNELS.

IF YOU HAVE ANY QUESTIONS CONCERNING THE FACILITIES THAT WILL BE AVAILABLE FOLLOWING TERMINATION OF THE LOCAL CHANNEL PORTION OF THE AGREEMENT, PLEASE CALL ROGER HUBBELL (201-234-787 ZCZC

✓

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

file

In the Matter of

Interconnection Facilities)
Provided to the International) Docket No. 20452
Record Carriers)

PETITION FOR EXTENSION OF TIME

RCA Global Communications, Inc. (RCA Globcom) hereby requests that the Commission grant a fourteen day extension of the dates established for the filing of comments and replies in the above-captioned matter. In support of this Petition, RCA Globcom submits these considerations:

1. By its Memorandum Opinion and Order (the "Order") released on May 7, 1975, the Commission designated American Telephone and Telegraph Company (AT&T), French Telegraph Cable Company, ITT World Communications Inc. (ITT Worldcom), RCA Globcom, TRT Telecommunications, Inc., and Western Union International, Inc. (WUI) as parties respondent to this proceeding. The Commission further provided that any interested persons may participate in this proceeding by filing comments on the matters set forth in the Order within thirty days of the publication of the Order in the Federal Register, and that replies are to be filed within fifteen days thereafter. The Order was

published in the Federal Register on May 13, 1975, thereby establishing June 12, 1975 as the deadline for filing comments, and June 27, 1975 as the deadline for filing replies.

2. The release of the Order took place at the same time that intensive negotiations have been proceeding for the purpose of arriving at a settlement in the Commission's Docket No. 20199, which deals with the interconnection of program transmission services between AT&T and the Miscellaneous Common Carriers. These negotiations took place on an almost daily basis during the period from May 14 to May 30. The same legal counsel and many of the other staff personnel of RCA Globcom that have been involved in the Docket No. 20199 negotiations will also be involved in the preparation of comments in this proceeding. Therefore, because the settlement negotiations in Docket No. 20199 have been so extremely time consuming, there has not yet been sufficient time for RCA Globcom to give adequate consideration to the matters at issue in this proceeding.

3. In addition, the matters at issue in this proceeding are of basic importance to RCA Globcom's international telecommunications business, and the disposition of this proceeding could well have serious technical, operational and financial impact on that business. Therefore, even if RCA Globcom's staff resources had not been tied up on other significant matters pending before the Commission, the thirty-day comment period established by the Order herein would not have been

entirely sufficient for the investigation and consideration required for RCA Globcom to provide a proper response in this proceeding.

4. Finally, counsel for RCA Globcom has been advised that AT&T, ITT Worldcom, and WUI either support or do not oppose the extension of time requested herein.

WHEREFORE, in consideration of the matters set forth above, RCA Globcom believes that the public interest would be served by an extension of fourteen days of the deadlines for filing comments and replies in this proceeding. Accordingly, RCA Globcom requests that the deadline for filing comments be extended to June 26, 1975, and the deadline for filing replies be extended to July 11, 1975.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Denis J. Brion

Its Attorneys
2030 M Street, N. W.
Washington, D. C. 20036

June 4, 1975

X
1

CERTIFICATE OF SERVICE

I, Lili Holcombe, hereby certify that a copy of the foregoing PETITION FOR EXTENSION OF TIME was served this 4th day of June, 1975 by United States mail, postage prepaid, to the following:

Harry A. Davenport, Esq.
American Telephone & Telegraph Co.
195 Broadway
New York, NY 10007

Warren Y. Zeger, Esq.
COMSAT General Corporation
950 L'Enfant Plaza, S. W.
Washington, DC 20024

Daniel J. Harrold, Esq.
Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Mr. J. A. Berenger
The French Telegraph Cable Company
25 Broad Street
New York, NY 10004

Joseph J. Jacobs, Esq.
ITT World Communications Inc.
67 Broad Street
New York, NY 10004

Roderick A. Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Ave., N.W.
Washington, DC 20006

Robert Michelson, Esq.
Western Union International, Inc.
One WUI Plaza
New York, NY 10004

s/ Lili Holcombe

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 77-361
69960

In the Matter of)
)
Interconnection Facilities Provided to) DOCKET NO. 20452
the International Record Carriers)

ORDER

Adopted: May 26, 1977 ; Released: June 9, 1977

By the Commission: Commissioner Lee absent.

1. We have before us RCA Global Communications, Inc.'s (RCA Globcom) April 25, 1977 Request for Stay of our Final Decision and Order, FCC 77-176, released March 23, 1977, in the above-captioned proceeding. The Final Decision and Order (Decision), directed AT&T to remove the unlawful discrimination in the provision of entrance and intercity facilities as between the international record carriers (IRCs) and domestic satellite and specialized common carriers. By Order, FCC 77-273, released April 22, 1977, we granted AT&T additional time to comply with our Decision, until May 27, 1977.

2. RCA Globcom cites the reasons given in its April 25, 1977 Petition for Reconsideration of our Decision in support of its Request for Stay. Petitions for Reconsideration have also been filed by Western Union International, Inc. (WUI) and ITT World Communications, Inc. (ITT Worldcom). AT&T has filed a Petition for Clarification. Among other things, the IRCs' petitions allege that the various facilities provided to the IRCs are unique and thus warrant different treatment with respect to rates, practices and regulations than pertain to facilities provided to domestic satellite and specialized carriers. Thus, they oppose any changes in the way these facilities are presently offered under contracts. AT&T states its intention to file tariffs to comply with the Commission's Decision. 1/ However, AT&T alleges that its further analysis has disclosed a number of unique situations which may not have been contemplated by the Commission when it issued its Decision and which may not be appropriate for inclusion in tariffs.

1/ See AT&T Petition for Clarification, p. 2. Our Decision at paras. 17 and 25 left the means to eliminate the unlawful discrimination, i.e., by filing tariffs or expanding those carriers subject to standard contracts, up to AT&T.

3. We shall deny RCA Globcom's Request for Stay. Since our Decision recognized that AT&T might provide the facilities in question to the IRCs on different terms and conditions with appropriate justification, FCC 77-176 at para. 8, fn. 8, it is possible that many of the concerns the IRCs state in the petitions could be alleviated in light of the tariff revisions and justification filed. Moreover, since such tariffs are to be filed on not less than 90 days notice to the public before they can become effective, the status quo will pertain during the notice period and there is no threat of imminent harm to the IRCs. We note Virginia Petroleum Jobbers Association v. FPC, 259 F. 2d 921 (D.C. Cir., 1958), holds, among other things, that a showing of irreparable injury is required before a stay must be granted. 2/ The IRCs will not be prejudiced during the notice period, which affords the IRCs and other parties ample opportunity to file comments on such tariffs. We will act on the merits of the pending Petitions for Reconsideration and Clarification in light of the tariff filings made by AT&T and any comments filed with respect thereto. This approach will be most conductive to the orderly dispatch of the Commission's business and the ends of justice. See 47 U.S.C. §§154(i) and (j).

4. Accordingly, IT IS ORDERED, That RCA Globcom's Request for Stay IS HEREBY DENIED for the reasons stated herein, without prejudice to refiling at a later date prior to the effectiveness of AT&T's tariffs filed pursuant to our Decision. 3/

FEDERAL COMMUNICATIONS COMMISSION

Vincent J. Mullins
Secretary

2/ See our Order, FCC 77-159, released March 14, 1977, in Docket No. 20097, Resale and Shared Use, where we denied a request for stay of our Final Decision, 60 FCC 2d 261, on these grounds. Also, in similar circumstances, on March 22, 1977, the 2nd Circuit Court of Appeals denied a request for stay of the Commission's Resale and Shared Use Decision. See AT&T v. FCC, Case No. 77-4057 (2nd Cir., 1976).

3/ On May 20, 1977 WUI filed a Motion for extension of the time, from May 27, 1977 to June 30, 1977, in which AT&T must comply with our Decision. It alleges primarily that compliance is not possible until the Commission first acts on pending petitions for reconsideration or clarification filed by the IRCs and AT&T. We will deny WUI's request for an extension of time for the reasons given above in denying RCA Globcom's request for stay.

file: Facilities Agreement
Inquiry

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

ROBERT E. CONN
Executive Vice President

Telephone (212) 363-6404

June 9, 1977

Mr. Richard B. Nichols
Vice President-Overseas
American Telephone & Telegraph Company
Long Lines Department
Room 4B114
Bedminster, New Jersey 07921

Re: General Agreement for Leasing
of Facilities, dated May 9, 1968,
and Letter Agreement, dated
November 20, 1968

Dear Mr. Nichols:

This is in reference to your proposed termination of the above-captioned agreements between American Telephone and Telegraph Company and Western Union International, Inc. Such termination would be effective August 26, 1977, assuming that the subject facilities would then be available to WUI pursuant to Tariff F.C.C. No. 4, which is scheduled to become effective on August 25, 1977.

Unfortunately, the timetable adopted by AT&T leaves no margin for error. In the event that the effective date of the tariff is deferred beyond August 25, 1977, for any reason, WUI might not be able to obtain the subject facilities, since the contracts will have been terminated and the tariff not yet effective. Any resulting termination of service would be contrary to law and to the public interest.

Therefore, we suggest that your termination notice be modified, so that the agreements will terminate either on August 26, 1977, or if the tariff is not then effective, on the effective date, if any, of Tariff F.C.C. No. 4.

This letter is without prejudice to our position that these facilities should continue to be furnished by contract rather than by tariff. Additionally, we reserve the right to take appropriate regulatory or judicial actions to protect our interests.

Very truly yours,

Robert E. Conn

bcc: EAG RPR
JGM TSG
EB DHT
RM PHS
MNE EBON

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

Telephone (212) 363-5812

MARC N EPSTEIN
Attorney

RECEIVED
JUL 13
LAW DEPARTMENT

June 10, 1977

Office of the Executive Director
Federal Communications Commission
1919 M Street, N. W.
Washington, D.C. 20554

Re: REQUEST FOR INSPECTION OF RECORDS;
DOCKET No. 20452

Dear Sir:

This is a request pursuant to: (1) the Freedom of Information Act, Title 5, United States Code, Section 552 (b); (2) the applicable Commission regulations, Title 47, Code of Federal Regulations, "Part 0, Subpart C - Public Information and Inspection of Documents"; and (3) Home Box Office, Inc., D.C. Cir. Ct. of Apps. Case No. 75-1280 et al., March 29, 1977:

> For information relating to any and all ex parte contacts between Commission officials and personnel and representatives of other entities, directly or indirectly concerning the "restricted rule-making proceeding" in Docket No. 20452, which was instituted on May 7, 1975, insofar as such proceeding relates to the possible requirement for the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts.

Included within this request are all written records concerning meetings between Commission Staff and the AT&T Staff relating to the subject matter of this docket. In addition, the Commission is requested to furnish the dates of all such meetings, the names and affiliations of all participants therein, and the content and substance of what occurred at the meetings, including but not limited to written summaries of oral communications.

In accordance with Section 0.461 (b)(2) of the aforesaid regulations of the Commission, there is no specified maximum search fee. However, we wish the search to be completed, regardless of cost.

*

June 10, 1977

The Commission is respectfully requested to satisfy this request promptly in order to enable us to take timely remedial action with respect to the Commission's Order of May 27, 1977 in this docket, before either the Commission or an appellate court.

Respectfully submitted,

Marc N. Epstein

cc: All parties to this docket

I

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004
Telephone (212)

MARC N EPSTEIN
Attorney

RECEIVED
JUN 21 1977
LAW DEPARTMENT

June 17, 1977

Mr. Vincent J. Mullins,
Secretary
Federal Communications Commission
Washington, D.C. 20554

Attn: Common Carrier Bureau

Re: American Telephone and
Telegraph Company
Transmittal No. 12758
and No. 5

Dear Mr. Mullins:

By transmittal letter dated May 26, 1977 (Transmittal No. 5) American Telephone and Telegraph Company (AT&T) filed certain tariff material relating to Bell System Operating Companies Tariff F.C.C. No. 4. By transmittal letter dated May 27, 1977 (Transmittal No. 12758), AT&T filed certain tariff material relating to its Tariff F.C.C. No. 266.

Western Union International, Inc. (WUI) hereby requests an extension of time from June 20, 1977 and June 21, 1977, respectively, until July 6, 1977 within which to file its Petition For Suspension of the above tariff filings.

The undersigned is responsible for representing WUI in Docket No. 20452. The above tariff filings were submitted by AT&T in response to the Commission's Final Decision and Order in that docket adopted March 8, 1977 (FCC 77-176). On June 15 and 16, 1977, the undersigned was involved in representing WUI in the hearing to investigate the lawfulness of AT&T tariff F.C.C. No. 260 (Docket No. 21122) Needless to say, preparation and participation in said hearing required the undersigned to devote substantial amounts of time to Docket No. 21122. As a result, there has not been sufficient time to adequately review and evaluate the tariff filings.

Moreover, key WUI officials are presently unavailable for consultation on the tariff material as they are attending the North Atlantic Planning Conference in Rome, Italy. It is essential that these officials review the subject AT&T tariffs.

By June 30, 1977, WUI expects to receive from the Commission information in response to its request of June 10, 1977, filed pursuant to the Freedom of Information Act. That information is necessary to WUI's review of the subject AT&T tariffs.

WUI could not reach appropriate AT&T counsel to request consent to this request because said counsel is also attending the Rome meeting.

Very truly yours,

Marc N. Epstein

Marc N. Epstein

MNE: dd

cc: All parties to Docket 20452

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

REC
RM
MNE

June 20, 1977

RECEIVED
JUL 1 1977
LAW DEPARTMENT

IN REPLY REFER TO:
9510

Marc N. Epstein, Esq.
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

In re: AT&T Transmittal No. 12758
and No. 5

Dear Mr. Epstein:

In a letter of June 17, 1977, you requested on behalf of Western Union International, Inc. an extension of time until July 6, 1977 within which to file a petition for suspension of American Telephone and Telegraph Company's revisions to its Tariff F.C.C. No. 266 embodied in Transmittal No. 12758 and Bell System Operating Companies' revision to their Tariff F.C.C. No. 4 embodied in Transmittal No. 5. Absent an extension of time, suspension petitions are due on June 21, 1977, pursuant to Section 1.773(b) of the Commission's Rules, 47 C.F.R. §1.773(b).

We find that good cause has been shown for the relief requested by WUI. Accordingly, it is ordered, pursuant to Section 0.291 of the Commission's Rules, 47 C.F.R. §0.291, that Section 1.773(b) of the Rules is waived to the extent that WUI's petition for suspension of AT&T's Transmittal No. 12758 and No. 5 may be filed no later than July 6, 1977.

Sincerely yours,

Ruth V. Reel

Ruth V. Reel
Chief, Tariff Division
for Chief, Common Carrier Bureau

cc:
All Parties to Docket No. 20452

Western Union International, Inc.
ONE WUI PLAZA - New York, N.Y. 10004

MARC N. EPSTEIN
Attorney

Telephone (212) 3635812

RECEIVED
JUN 21 1977
LAW DEPARTMENT

June 20, 1977

David A. Irwin, Esq.
Federal Communications Commission
Washington, D.C. 20542

cl

Re: REQUEST FOR INSPECTION OF RECORDS
Docket No. 20542

Dear Sir:

This is to confirm that Western Union International, Inc. has, pursuant to the request of a member of the Commission's staff, granted the Commission until June 30, 1977 to respond to its Request for Inspection of Records dated June 10, 1977.

Very truly yours,

Marc N. Epstein

Marc N. Epstein

MNE: dd
cc: All parties to Docket No. 20452.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

June 24, 1977

IN REPLY REFER TO:

9550

Mr. Marc N. Epstein, Esq.
Western Union International
One WUI Plaza
New York, New York 10004

Re: Request for Inspection of Records;
Docket No. 20452

Dear Mr. Epstein:

This is in reference to Western Union International's (WUI) letter to the Executive Director of June 10, 1977, wherein you request information relating to any or all alleged "ex parte contacts between Commission officials and personnel and representatives of other entities directly or indirectly concerning the restricted rulemaking proceeding in Docket No. 20452 . . . insofar as such proceeding relates to the possible requirement for the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts." Specifically, you state that your request includes submission of "all written records" concerning meetings between Commission staff and AT&T relating to Docket No. 20452, dates and names and affiliations of all participants of such meetings, and the content and substance of what occurred at the meetings, including but not limited to written summaries of oral communications. You further state that your request is made pursuant to: "(1) the Freedom of Information Act; Title 5, United States Code, Section 952; (2) the Applicable Commission regulations, Title 47, Code of Federal Regulations, 'Part 0, Subpart C - Public Information and Inspection of Documents'; and (3) *Home Box Office, Inc.*, D.C. Cir. Court of Appeals, Case No. 75-1280, *et al*, March 29, 1977."

Since it is not clear what you mean by your reference to "ex parte" contacts (e.g., prohibited or permissible contacts as set forth in Sections 1.1201-1.251 of the Commission's Rules, 47 C.F.R. §§ 1.1201-1.251), we have endeavored to supply the dates, contents and substance for all contacts (written or oral) of which we are aware, except routine inquiries where a party merely inquired about obtaining a copy of a Commission Decision or about the scheduling of Commission actions. Therefore, we make no attempt herein to characterize the nature of any contacts which may have been made. In regard to your request for "written records," we note that the summaries below are based upon the individual recollections of members of the Commission staff involved with any contacts. We note further that the Freedom of Information Act does not apply to internal memoranda setting forth written recollections of the kind involved here, but we have nevertheless set forth the essence of such recollections below to be responsive to your request.

At the outset, it may be useful for background purposes to briefly summarize the Commission's March 23, 1977, Decision in Docket No. 20452, FCC 77-176. The Commission's Decision ordered AT&T to eliminate the "unlawful discrimination" in its provision of entrance and intercity facilities as between the international record carriers (IRCs), including WUI, and domestic satellite and specialized carriers. IRCs are generally provided the facilities in question under contracts while the non-IRC carriers are provided "essentially identical" facilities under Other Common Carrier (OCC) Facility Tariffs. The contracts and tariffs generally contain different terms, conditions, and rates. The Commission left the means of eliminating the unlawful discrimination up to AT&T. All the contacts described below occurred subsequent to the Commission's Decision. We have found none that were made prior to issuance of the Decision other than the routine inquiries referred to above.

March 24, 1977, Meeting. At the request of Mr. Wendell Hayes of AT&T Long Lines, a meeting was held at 1919 M Street, N. W., in Mr. Lawrence Katz's (Chief, Tariff Proceedings Branch) office, Room 524, at 10:00 AM. Other members of the Common Carrier Bureau (Bureau) in attendance were Messrs. Thomas Elcan and Danny Adams, both of the Tariff Review Branch. Mr. Robert Ranalli from AT&T Long Lines also attended. The meeting lasted approximately 45 minutes. The subject of the meeting was the problems AT&T indicated it was having in filing tariff revisions, or maintaining contracts in some cases, to implement the Commission's Decision in Docket No. 20452. The essence of the problems the AT&T personnel described was applying the language of the Decision and its requirements to a few unique factual situations. Apparently, AT&T sought staff reactions to their stated problems and staff interpretation of the Commission's Decision. The result of this meeting was that the complexity of the specific cases required a larger, more detailed meeting to be scheduled for one week later, March 31, 1977. No documents were provided by AT&T to the staff nor did the staff prepare any written documents.

March 31, 1977 Meeting. This meeting was held at 10:00 AM in Room 511, at 1919 M Street, N. W., and lasted approximately two hours. Attending from the Bureau were Messrs. Lawrence Katz, Thomas Elcan, Danny Adams and Paul Darling (Chief, Tariff Review Branch). Attending from AT&T were Messrs. Hayes, Ranalli, Roger Hubbell, and 2 or 3 other unknown representatives. The subject of this meeting was the same as the March 24, 1977 meeting, ie., certain problems AT&T said it was having in implementing the Commission's Decision by filing tariffs or retaining contracts. It appears that AT&T had not yet decided upon all the actions it would take to comply with the Commission's Decision. In this regard, AT&T employees identified approximately 3-5 problems they were having in implementing the Commission's Decision. For example, the AT&T representatives mentioned existing contracts between AT&T and one or more IRCs to which they believed the Commission's Decision did not apply, or might not apply, e.g., a single existing telegraph grade circuit from Florida provided to one IRC for service to Cuba, a contract among AT&T, IRCs and the Department of Defense (DOD) for testing of DOD's AUTOVON circuits, and the AT&T-IRC facilities contracts governing the rotation of IRCs on a weekly basis to provide overseas television service. An AT&T representative also used a blackboard to depict certain entrance facilities provided to the IRCs under contracts.

A member of the Bureau (Mr. Katz probably) stated that the staff opinions bound neither the Bureau Chief nor the Commission. Further, he stated that staff opinions could change as pleadings were filed against tariff filings. With those disclaimers, the staff members stated their views that, generally, if facilities were provided, only to the IRCs with no request for such facilities from other carriers, the Decision did not apply. They also indicated that a cost difference, if justified, could render a discrimination reasonable. The point was made that the Commission was concerned with cases of actual or potential unlawful discrimination. AT&T once started to discuss the "difference" in cost of building IRC entrance facilities vis-a-vis OCC entrance facilities. After being told none of the AT&T employees present was an attorney, the Bureau staff stated that such a discussion should not occur. AT&T was told to file a petition for reconsideration if it wished to discuss that matter. The meeting adjourned and it appeared AT&T still had unresolved problems regarding implementation. No written documents were provided to the staff by AT&T nor did the staff prepare any written documents.

April 20, 1977 Meeting. Mr. Hayes again requested a meeting, which was held at 11:00 AM in Room 511, 1919 M Street, N. W., and lasted approximately 45-60 minutes. Attending from the Bureau were Messrs. Katz and Daniel Harrold from Tariff Proceedings Branch and Messrs. Darling and Elcan from Tariff Review Branch. Messrs. Hayes , Ranalli, Hubbell and 2 or 3 other unknown AT&T representatives attended. Near the beginning of the meeting, Mr. Katz informed AT&T that the Commission's Decision was still subject to the filing of petitions for reconsideration. AT&T informed the staff basically that it would file tariffs to comply with the Decision in cases were there was existing or potential unlawful discrimination with respect to AT&T's provision of "essentially equivalent" facilities to IRCs and Other Common Carriers (OCCs). AT&T stated that intercity facilities then provided to IRCs under contracts would be provided in the future under the existing OCC Facility Tariffs at rates specified therein.

With respect to entrance facilities, AT&T stated that it would also provide those facilities to the IRCs under the OCC Facility Tariffs, establishing an "Overseas Connecting Facility" in the tariff for such purpose and that the existing OCC Tariff rates would apply. The statement regarding applicable rates may have been in response to a question from the staff. AT&T also stated there were several "quirks" concerning those entrance facilities provided to the IRCs and that it was likely some of these would be provided for in the tariffs. At this point, an AT&T representative used the backboard to demonstrate the manner in which entrance facilities are provided to IRCs by explaining that they are provided in "supergroups." AT&T also explained some of the operating arrangements between AT&T and the IRCs, e.g., one operating arrangement explained may have related to the service reliability parameters established for the facilities as compared to similar provisions in the OCC Tariffs. AT&T stated that it had not decided how to handle all these "quirks." Other "quirks" mentioned by AT&T related to other IRC-AT&T contracts where AT&T was of the opinion that there was no unlawful discrimination against OCCs and that it did not appear to AT&T that the Commission's Decision should apply to these cases. These "quirks" (4 or 5 in all) concerned facilities provided to one IRC for the White House "Hotline" to the U.S.S.R., a telegraph grade circuit provided by AT&T to one IRC which is connected to facilities of the Cuban American Telephone Company for service to Cuba, facilities provided to IRCs for "restoration" in case of failure in submarine cables or INTELSAT facilities, a 48 KHz facility provided to one IRC, and television facilities provided to all the IRCs in connection with overseas television service where the IRCs rotate on a weekly basis to provide service. AT&T stated that all or at least some of these "quirks" would be in its petition for reconsideration or clarification and an AT&T representative stated his view that it was likely that the IRCs would also be filing such petitions.

No one on the staff stated just how all these "quirks" should be treated in light of the Commission's Decision. However, someone on the staff may have recognized that perhaps certain existing operating arrangements between AT&T and IRCs could be preserved. Either Mr. Katz or Mr. Harrold stated that the Commission's Decision was concerned with cases where there was unlawful discrimination as between the IRCs and OCCs in AT&T's provision of facilities. At no time did any member of the staff express a preference or opinion regarding what means, i.e., tariffs or contracts, AT&T should use to eliminate cases of unlawful discrimination. AT&T provided no documents to the staff at the meeting. Mr. Harrold wrote down on a legal pad 3 or 4 of the "quirks" mentioned by AT&T but discarded this paper within 1 or 2 days after the meeting. No other written documents were prepared by the staff.

May 18, 1977 Meeting. At the request of AT&T, Mr. Hayes, Mr. Jack Hickman and another unknown AT&T representative met with Mr. Elcan in his office, Room 510, 1919 M Street, N. W. The purpose of the meeting was for AT&T to present a draft of a request for special permission for waiver of Sections 61.38 and 61.74 of the Commission's Rules in regard to the tariff filing to be made in compliance with the Commission's Decision in this case. Mr. Elcan read the draft and advised AT&T representatives that he did not see any problem with the letter but that he would check with other members of the staff and call them back. Mr. Elcan called Mr. Hayes of AT&T on May 23 and told him that there appeared to be no problems with the draft and he should file it. Other than the draft of the request for special permission, which was subsequently filed and is therefore already publically available, no written documents were provided by AT&T. Nor did Mr. Elcan prepare anything in writing regarding the meeting.

May 26, 1977 Contact. Mr. Katz received a telephone call from Mr. Robert Conn of WUI, obstensibly for the purpose of determining whether or not the Commission had acted on RCA Globcom's request to stay implementation of the Commission's Decision, which WUI supported in writing. During that conversation, however, Mr. Conn raised the issue of alleged "ex parte" violations, as well as "prejudgment" of the issue, as "evidenced" by a letter sent from Walter Hinchman (Chief, Common Carrier Bureau) to AT&T prior to the initiation of Docket No. 20452 requiring Bell to file tariffs for services and facilities offered to the IRCs. When Bell refused, the Docket No. 20452 proceeding was instituted. Mr. Conn also stated his belief that the Commission was in a poor appellate posture in this case, by virtue of the "ex parte" contacts, alleged "prejudgment," and its refusal to order evidentiary hearings during the early stages of the case. He said that the Commission could cure, in part, these defects by ordering an evidentiary hearing at this time, as WUI had requested in its petition for reconsideration. He said he felt that the Commission would see the error of its way and order some type of hearing. He was concerned, however, that the AT&T tariffs would go into effect during the course of the hearing, and that therefore, the Commission should have granted the requested stay by RCA Globcom to prevent their filing and that it may wish to reconsider on its own motion. The Commission denied RCA Globcom's request for stay by Order, FCC 77-361, adopted May 26, 1977. Mr. Katz indicated that, if the Commission should grant WUI's request to initiate a hearing, it would be reasonable for the staff to ask AT&T to defer the effective date or withdraw the tariff, but stated his view that the Commission could not order Bell to take such action.

Pursuant to your request, the above summary sets forth the dates, content and substance of all alleged "ex parte" contacts with respect to Docket No. 20452 without attempting to characterize the propriety of such contacts. Any party wishing to file comments on this matter may do so on or before July 15, 1977.

Sincerely yours,

Philip V. Permut
Acting Deputy Chief, Common
Carrier Bureau

cc: All parties Docket No. 20452
Executive Director

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of American Telephone and Telegraph Company in Transmittal Nos. 5 and 12758 were served this 18th day of July, 1977, by mailing copies thereof by United States mail, postage prepaid, to the following persons at the addresses shown below:

Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Ruth V. Reel, Esq.
Chief, Tariffs and Services Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Francis J. DeRosa, Esq.
Charles M. Lehrhaupp, Esq.
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

Mr. J. A. Berenger
The French Telegraph Cable Company
25 Broad Street
New York, New York 10004

Joseph J. Jacobs, Esq.
ITT World Communications Inc.
67 Broad Street
New York, New York 10004

Roderick A. Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Marc Epstein, Esq.
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Warren Y. Zeger, Esq.
Comsat General Corporation
951 L'Enfant Plaza, S.W.
Washington, D.C. 20024

/s/John T. Egan
John T. Egan

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

BELL SYSTEM OPERATING COMPANIES

Proposed Tariff F.C.C. No. 4,
Overseas Connecting Facilities
for Other Common Carriers.

Transmittal No. 5

To: The Commission

PETITION FOR SUSPENSION

RCA Global Communications, Inc. (RCA Glōbcom), pursuant to Section 204 of the Communications Act of 1934, as amended, and Section 1.773 of the Commission's Rules and Regulations, hereby petitions the Commission to suspend* for the full statutory period and investigate proposed Tariff F.C.C. No. 4 of the Bell System Operating Companies (hereafter "Bell" or "AT&T") issued on May 27, 1977 under Letter of Transmittal No. 5 to become effective August 25, 1977.** The subject tariff, filed in purported compliance with the Commission's Final

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* RCA Glōbcom is also filing simultaneously herewith a petition for rejection of this tariff.

** RCA Glōbcom also hereby petitions to suspend related amendments to tariffs filed by the New Jersey Bell Telephone Company (Tariff F.C.C. No. 33), the Pacific Telephone and Telegraph Company (Tariff F.C.C. No. 126) and Southern Bell Telephone and Telegraph Company (Tariff F.C.C. No. 55).

Decision and Order in Docket No. 20452, 42 F.R. 16177 (March 25, 1977),* establishes rates and regulations applicable to the provision of facilities to the international record carriers (IRCs) connecting the overseas cable stations, satellite earth stations and radio sites with the IRCs' operating centers in the "gateway" cities authorized by the Commission.** These circuits are the essential extensions or international "tail" circuits which bring the international transmission facility into the operating offices of the carriers, including the AT&T Long Lines Department.*** As such, they are integral parts of circuits used for foreign or overseas communication. The other category of connecting facilities covered by the Commission's Final Decision and Order in Docket No. 20452 (the so-called "intercity" facilities) which link the IRCs' gateway offices would hereafter be provided by Bell pursuant to AT&T Long Lines Department Tariff F.C.C. No. 266.

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* Reconsideration of the underlying Commission decision in Docket No. 20452 has been sought by RCA Globcom, ITT World Communications Inc. (ITT Worldcom) and Western Union International, Inc. (WUI). In addition, clarification has been sought by AT&T. The instant petition is submitted without prejudice to RCA Globcom's position that no Bell tariff should be processed until the Commission first considers and acts on the foregoing pleadings directed to the decision in Docket No. 20452, which decision we submit contains material errors of fact and law and was made without "observance of procedure required by law." See 5 U.S.C. §706 (2)(D).

** Unlike AT&T Long Lines, the IRCs do not provide service between points within the continental United States and are authorized by the Commission to receive overseas traffic directly from customers or to deliver traffic overseas directly to customers only in five so-called "gateway" cities--New York, Washington, San Francisco, Miami, and New Orleans.

*** The IRCs' overseas circuits are provided through various submarine cables, which the IRCs jointly own and concurrently use with AT&T, see, e.g., TAT-6 Decision, 35 F.C.C 2d 801, 822-23 (1972), and through the Intelsat satellite system, which is used by all overseas carriers, see Overseas Communications, 30 F.C.C. 2d 571 (1971).

For the reasons set forth in detail in its "Petition for Rejection" of this tariff, RCA Globcom submits that this tariff is patently defective and should properly be rejected by the Commission. However, in the event the Commission determines not to reject, we believe, at the very least, suspension and investigation of this tariff is called for.*

RCA Globcom submits that, in the absence of rejection, suspension is necessary to consider whether the proposed tariff scheme is "unjust and unreasonable" within the meaning of Section 201(b) of the Communications Act; makes an "unjust or unreasonable discrimination in charges...for or in connection with like communication service" within the meaning of Section 202(a) of the Act; and constitutes an unauthorized "discontinuance, reduction, or impairment of service" within the meaning of Section 214(a) of the Act.

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* See American Telephone and Telegraph Co. Docket No. 21122, released Feb. 23, 1977, FCC 77-124; RCA American Communications, Inc. Docket No. 21139, released March 23, 1977, FCC 77-175.

We also wish to point out at the outset that if there is an increase in charges to the IRCs to the levels contained in the present OCC tariffs, these costs will inevitably have to be reflected in the IRCs' charges to the public. Indeed, charges for certain services, particularly wideband leased channel services on which the carriers at present are not making an adequate return, may necessarily have to be increased or the IRCs will suffer out-of-pocket losses. For example, as shown in Attachment A to RCA Glōbcom's "Petition for Reconsideration", we estimate that if we are required to pay OCC rates to extend 50 kbs leased satellite channels from the international earth stations to our operating centers, the monthly rates to the public could increase as much as $5,300 in the case of service from San Francisco and $3,300 in the case of service from Washington, D.C. via Etam.

I. The Proposed Tariff Is "Unjust and Unreasonable" In Contravention of Section 201(b)

1. The Instant Tariff is Totally Unsupported By Any Showing To Justify the Particular Rate and Service Structure Proposed

RCA Glōbcom submits that there has been no showing whatsoever which would support a finding that the proposed tariff scheme intended to replace the preexisting intercarrier contracts is "just and reasonable"in compliance with the mandate of Section 201(b) of the Act. We further note that no justification or explanatory data has been provided for the rates proposed which would ordinarily be required by

Section 61.38 of the Commission's Rules, including the specific data necessary to support the "rate increase" which will result to the I[illegible] and their customers from adoption of this tariff as set forth in paragraph (d) of that Section. While we recognize that the Commission has waived the requirements of Section 61.38 in the event service is offered on identical terms included in tariff offerings to DSCCs and SCCs (Final Decision and Order in Docket No. 20452, Para. 17, Note 8), we do not view this as an unconditioned license to burden the international record carriers' service and customers with significantly higher charges and potentially onerous service restrictions without providing any rationale or justification for such action.

Indeed, one of the issues we have raised on reconsideration of the Commission's Final Decision and Order in Docket No. 20452 is that the Commission in fact was prescribing or authorizing rates without following the procedures required by law under Section 205 of the Act.* If it was the Commission's intent in Docket No. 20452 (albeit unstated in so many words) for AT&T essentially to file its Tariff F.C.C. No. 266 rates and service structure, we submit this clearly would be deemed a "rate prescription" under the relevant judicial precedents. Certainly, the Commission cannot state that it is not prescribing rates, on the one hand, and at the same time effectively achieve the same practical result by allowing this tariff filing to go into effect without a scintilla of supporting evidence or data in the record.

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* *American Telephone and Telegraph Company v. FCC*, 487 F. 2d 865 (2d Cir. 1973). (Actual impact of agency action and not its form is determinative.)

In denying RCA Glōbcom's request for stay of the Docket No. 20452 decision, the Commission specifically stated that that "[d]ecision recognized that AT&T might provide the facilities in question to the IRCs on different terms and conditions with appropriate justification."* The Commission further specifically indicated that it would not automatically accept any Bell submission, but "reserve[d] the right to... reject, suspend or investigate whatever may be filed."**

We submit that allowing this tariff scheme to take effect could accord Bell a potential "windfall" at the expense of the IRCs and their customers and, of equal importance, create operational problems for such carriers, without anything which would show that the approach taken is either justified by legitimate cost or operational considerations or mandated by the Commission's decision in Docket No. 20452. Thus, without Bell supplying any rationale to support such action, the IRCs will be charged significantly higher rates for the same (or in some cases less) service than they have long received under contract; the terms under which certain facilities have heretofore been provided will be changed; and various facilities offerings will be eliminated without appropriate authority.

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* Order released June 9, 1977, FCC 77-361, Para. 3.

** Final Order and Decision in Docket No. 20452, Para. 17, n. 8.

These considerations are particularly relevant given the special facts and operational practices which apply to facilities used in direct conjunction with international transmission facilities (as opposed to the provision of domestic connecting customer loops).* These factual differences, moreover, are expressly recognized by Bell. Thus, the instant Bell Tariff F.C.C. No. 4 covers only international "entrance" facilities terminating at the international cableheads and earth stations. Such facilities are treated separately (though charged for on the same basis) from "intercity" facilities which would be provided under AT&T Tariff No. 266.

We submit that the law is now well settled that Bell may not by tariff arbitrarily impose restrictions, requirements or costs on other carriers.** In view of the absence of any showing that the rate and service scheme which would be applied to the IRCs here is "just and reasonable" in accordance with the statutory standard, this tariff should be suspended and investigated.

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* The distinctions between IRC operations and those of the domestic carriers obtaining facilities under AT&T Tariff F.C.C. No. 266 are set forth at length in RCA Globcom's Petition for Reconsideration in Docket No. 20452.

** See, e.g., American Telephone and Telegraph Co., et al., 60 FCC 2d 939 (1976); Use of Satellite Facilities for Certain Services Having Access to the Switched Telephone Network, FCC 76-766, released August 11, 1976.

2. The Tariff Changes Long-Standing Operational Practices Under the IRC Contracts Without Explanation or Justification

The tariff scheme proposed would change arbitrarily the nature and operational practices affecting certain facilities offerings made to the IRCs which will tend to complicate their provision of service. For example, Bell's practice under the IRC contracts of providing the IRCs with voice-grade circuits having a fixed loss* is not incorporated in this tariff. Rather, any loss between 0 and 16 db is permitted. As we pointed out in our Petition for Reconsideration, when a circuit is engineered, it is necessary to know the amount of loss in order to set up equipment properly. However, under the instant tariff, because no fixed loss is provided, it may not be possible to engineer a circuit in advance of bringing up the circuit and actually measuring the loss. The net result is that all circuits coming in from AT&T could have different levels. Since we are working into an international carrier system, such nonstandardization would complicate maintenance and other operational functions. It could also result in significant delays in providing service until engineering data is exchanged. Furthermore, in order to standardize loss characteristics, it would be necessary to incur additional expenditures for required signal adjustment equipment.

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*"Loss" refers to the decrease in the strength of the signal as it travels from one end of the circuit to the other.

The tariff also eliminates provision of C2/Overseas conditioning. This may result in increased equalization requirements and/or payment of higher charges for C4 grade specifications to replace C2/OS.

The tariff is silent on the question of restoration of international facilities. We submit that we are entitled to assurance that we will be able to obtain restoration facilities as at present and that our role in participating in restoration planning is not impaired or diminished.

In general, the tariff fails to provide the same degree of operating flexibility presently provided pursuant to the practices under the existing contracts. Since the IRCs' facilities in issue are an integral part of the overseas transmission link (and not end links or local loops to customer locations), such flexibility is essential to the provision of their public service offerings. Certainly, an issue is presented which merits further study by the Commission.

3. Further Investigation Here Is Consistent With the Settlement Agreement in Docket No. 20099

The primary issues in Docket No. 20099 concerned the inability of then new domestic terrestrial and satellite carriers, which offer domestic private line services in competition with AT&T, to obtain requisite facilities from AT&T in a timely manner and at reasonable rates. After approximately five months of intensive negotiations, a

Settlement Agreement was reached among the concerned parties which was accepted, but not approved, without prejudice by the Commission.*

Although the IRCs attended the Docket No. 20099 negotiating sessions, and were signatory to the resultant Settlement Agreement, it should be recognized that the interest of the IRCs was peripheral to the primary issues which concerned the domestic OCCs. Indeed, during the discussions it was recognized that the IRCs obtained entrance facilities pursuant to contractual arrangements with AT&T and no party suggested any change to such arrangements.** It was only after the Settlement Agreement was signed that the Commission expressed formal concern with such arrangements and raised a new issue for future investigation.*** Thus, at the time when the IRCs signed the Settlement Agreement it was not known or anticipated that the terms and conditions agreed to by AT&T's new competitors would become binding upon them.

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* American Telephone and Telegraph Co. et al., 52 FCC 2d 727, 732 (1975).

** Id. at 735.

*** On the same day it accepted the Settlement Agreement, the Commission opened Docket No. 20452 to inquire expressly into the IRC arrangements. Interconnection Facilities Provided To The International Record Carriers, 52 FCC 2d 1014 (1975).

Notwithstanding the Commission's acceptance of the Settlement Agreement, none of the issues set for hearing in Docket No. 20099 were decided on the record; some were mooted as a result of the intercarrier negotiations, while others were simply ignored. The Settlement Agreement further provided that during an Interim Period new OCC tariffs containing new rate schedules, supported as required by Part 61 of the Commission's Rules, would be developed.* To date, however, such Part 61 data has not been developed or submitted to the Commission for examination by any of the Bell System carriers. AT&T Tariff F.C.C. No. 266 continues to cross-reference its Tariff F.C.C. No. 260, the rates in the latter tariff continue to be subject to investigation by the Commission, and the local Bell System tariffs (e.g., those of Pacific Telephone and Telegraph Company) continue to publish the same rates which appear in their intrastate tariffs.

While the Commission may have granted AT&T a waiver of Part 61 from time to time in order that it might "expeditiously" file OCC tariffs, RCA Globcom submits that the failure to comply with Part 61 over the two-year period which has passed since the Commission's acceptance of the Settlement Agreement constitutes a violation of the spirit, if not the letter, of such Settlement Agreement. In this connection it is noted that the proposed schedule for Docket No. 18128 tariff and cost study filings does not include any date for submission of such cost data, suggesting that this data may not be forthcoming in the near future unless appropriate action is taken by the Commission.*

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* 52 FCC 2d at 734.

II. The Bell Tariff Is Unlawfully Discriminatory In Contravention of Section 202(a) of the Act

1. The Tariff Creates An Unlawful Discrimination Between Entrance Facilities Provided on the East and West Coasts

At present, the IRCs take entrance facilities on both coasts of the U.S. under uniform contract arrangements. Pursuant to Bell Tariff F.C.C. No. 4, interstate circuits required by the IRCs between a gateway city and a cablehead or satellite earth station located in a different state will be provided pursuant to AT&T Tariff No. 266, while facilities between a gateway city and cablehead or satellite earth station located in the same state will be provided pursuant to a local Bell carrier tariff at higher charges, despite the fact that such circuits are all utilized by the IRCs for identical purposes.

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* Memorandum Opinion and Order, released May 20, 1977, FCC 77-332.

Thus, under the instant proposal, entrance facilities between the IRCs' east coast operating centers and the principal transatlantic facilities would be provided at the rates specified in AT&T Long Lines Department Tariff F.C.C. No. 266 while similar facilities between the international record carriers' west coast operating centers and the principal transpacific facilities would have to be taken at the higher charges specified in Pacific Telephone and Telegraph Company Tariff F.C.C. No. 126. This is due to the fact that the IRCs' San Francisco gateway offices (the only west coast gateway which the IRCs are presently authorized) and the Jamesburg earth station and the terminals of the three Mainland/Hawaii cable systems are all located within the State of California. A similar disparity would apply to facilities wholly within the State of Florida taken under Southern Bell tariffs.

The discriminatory effect of this disparity is apparent when one views the following comparison of the rates presently paid by the IRCs for voice-grade circuits from their gateways to selected cableheads and satellite earth stations with the amounts which would be charged pursuant to the proposed tariffs.

Terminals	Mileage	Present Charges $	Proposed Charges $	Percent increase %	Bell Carrier
S.F. - Jamesburg	100	121.43	467.70	285.2	PT&T
S.F. - San Luis Obispo	201	167.95	893.52	431.8	PT&T
Miami - Jacksonville	325	308.84	838.00	171.3	S. Bell
N.Y. - Etam	316	219.63	486.60	96.6	AT&T
N.Y. - Greenhill	139	140.05	309.70	121.1	AT&T

Based on all circuits currently being leased by RCA Globcom, we anticipate total increased costs amounting to approximately $1.7 million annually if these tariffs are permitted to go into effect, with the percentage increases distributed as follows:

AT&T Long Lines	49.9%
Pacific Telephone and Telegraph	326.7%
Southern Bell Telephone Company	207.2%

We submit that this patent discrimination between like entrance facilities depending upon geographic location, i.e., whether such facilities connect to a transatlantic or transpacific cable or satellite circuit, is unlawful under Section 202(a) of the Act and warrants suspension of the instant tariff filing.*

These tariffs also raise two basic questions: first, whether the IRCs should be required to take a facility intended for use in the rendition of interstate or foreign service pursuant to an intrastate tariff; second, whether different charges, terms and conditions may be imposed by the local Bell operating companies. It would indeed be ironic if, in implementing a Commission order intended to effect interstate and foreign commerce and allegedly issued to end discrimination, the IRCs were required to take service under an intrastate rate pattern over which the Commission has no jurisdiction and at rates which are clearly discriminatory.

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* See American Trucking Association v. FCC, 377 F. 2d 121, 130 (D.C. Cir. 1966), cert. denied, 386 U.S. 943 (1967).

2. The Tariff Creates An Unlawful Discrimination Between Classes of Users and Localities

As heretofore noted, as a result of a series of cross-references, the rates published in AT&T Tariff F.C.C. No. 260 are those which RCA Glōbcom would pay for circuits provided between points in different states. Certain localities within the United States are designated as Category A cities in that tariff, while other localities are designated as Category B cities. Generally speaking, international gateway cities fall into the A category while the locations of the international cableheads, satellite earth stations and other RCA Glōbcom operating centers fall into the B category. International border crossing points, however, are also designated as Category A locations. As an exception to this general rule, certain rate centers are designated Category A for services provided to the U.S. government, but are designated Category B to other customers. The designation of a category to a location is important since the rates for like distances increase in the case of service between a Category A and a Category B location, and increase even more in the case of service between two Category B locations.

No explanation is given as to the reason for such different designations. We believe, however, that the relative number of circuits in use to a particular location may be a controlling factor. If such is indeed the case, RCA Glōbcom believes, if the combined requirements of the IRCs and AT&T are taken into account, that there is no justification in treating the international cableheads and earth stations differently than the international border crossing points to

Mexico and Canada, as well as certain other Category A cities listed in Tariff F.C.C. No. 260. Further, the designation of Lodi, California, a major operating center of RCA Glōbcom, as a Category A location to the U.S. Government and a Category B location to RCA Glōbcom is obviously discriminatory. Since the tariff lacks objective standards for determining A or B treatment, and since these provisions are discriminatory on their face, we submit that investigation by the Commission is demanded.

3. The Bell Tariffs Offer the IRCs Less Service Than AT&T Provides Its Own Customers At the Same Rates

While the instant tariffs offer facilities to the IRCs under the same terms and conditions as to other OCCs, the filing of such tariffs merely magnifies the current discrimination which exists between AT&T's facility offerings to the OCCs and its service offerings to the public. Although AT&T has never been required to explain clearly the differences which exist between its "facility" and "service" offerings, except in the area of rates which are equal to both offerings, it is clear that significant differences do exist. For example, it is well known that AT&T does not accept equal responsibility for the operation of the facilities which it provides to OCCs as it does for the service which it provides to the public.

The current contracts which exist between the IRCs and AT&T for entrance facilities recognize such differences inasmuch as the rates which the IRCs pay for such facilities are less than the rates which AT&T charges the public for circuits of comparable distance. Inasmuch as AT&T has now elected to charge "public rates" to the IRCs for something less than "public service", RCA Globcom submits that an on the record investigation of the differences in costs to AT&T for the provision of facilities and service is warranted.

III. The Bell Tariff Discontinues or Reduces Various Categories of Service Without Requisite Authority

The facilities which Bell proposes to offer pursuant to its Tariff F.C.C. No. 4 are limited to Voice Grade, Voice Grade Data, 50 kbps Data and 56 kbps Data. However, pursuant to practices which have applied under the present contract arrangements, RCA Globcom has in addition been able to acquire from AT&T groups or super groups of voice grade facilities. This offering is also made available by AT&T to domestic satellite carriers pursuant to its Tariff F.C.C. No. 265. The IRCs further currently may obtain under contract temporary circuits for short-term use from AT&T at lower than monthly rates. Under the proposed Bell System tariffs, such temporary service is discontinued. Rather, all facilities must be taken (and paid for) for at least a 30-day minimum period.*

Such temporary facilities are currently employed by the IRCs to provide essential communications in connection with various requirements including presidential trips abroad and major sporting events.

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* A six-month minimum charge is specified for certain categories of facilities such as 50/56 kbps data channels. No explanation is given for imposing a minimum charge of this length.

As shown below, the instant proposal will make future IRC temporary service uneconomic at anything approximating current charges:

One Day Temporary Leased Satellite Circuit to Europe

	Present Costs $	Projected Costs $
International satellite circuit	285.00	285.00
Terrestrial landline to E.S.	46.96	386.60
AT&T channel conditioning	56.00	65.00
TOTAL PAYOUTS	389.96	736.60
IRC rate	458.50	458.50
Operating margin	70.54	(278.10)

No explanation is given for the discontinuance of these offerings to the IRCs and, as far as we are aware, authority has neither been requested nor received for such discontinuance.

Section 214(a) of the Act requires that before effecting a "discontinuance, reduction, or impairment of service", a carrier must first apply for and obtain a certificate from the Commission. This statutory provision, moreover, has been expressly held by the Courts to apply to facts similar to those involved in the instant case. Thus, in a leading case on the subject, it has been stated:

> "The burden is cast upon the carrier which wishes to discontinue a service to make proper application for a certificate.
> The Telephone Company has not applied for such a certificate. It has, instead, simply announced its intentions in a filed tariff which tells other connecting carriers' what it is offering in the way of facilities."*

The Court went on to note that the term "community" as used in Section 214 could apply to "an economic 'community' of users, such as international record carriers."** The Court Stated:

> "The important concept of 'community' in Section 214 I take to be the public interest. In the issue here raised, the inconvenience to the customers of the international record carriers is at least as great as to the carriers themselves."***

We submit that Bell may not discontinue the offering of any of its present services to the IRCs in the manner set forth above without first seeking and obtaining authority under Section 214.

IV. The Instant Tariff Revisions Are Not In the Public Interest

1. The Tariffs Attempt to Change International Operating Policy Without Sound Rationale

The standards maintained by the IRCs, and the quality of international service which now exists, results in great part from the mutual and cooperative efforts of AT&T, which operates the cable terminals, and the IRCs to insure customers of rapid and efficient communications. Under present arrangements, AT&T and the IRCs use their best efforts to resolve service interruptions and other problems promptly regardless of which carrier might be "at fault".

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* ITT World Communications Inc. et al.v. New York Telephone Co., 381 F. Supp. 113, 120 (S.D.N.Y. 1974).

** Id. at 121.

*** Ibid.

The proposed Bell System Tariff F.C.C. No. 4 contains certain regulations which would tend to alter current procedures by placing AT&T and the IRCs in a more adversarial posture. For example, AT&T reserves to itself rights and privileges throughout the tariff for activities which heretofore were done on a mutual basis (see, e.g., Sec. 2.3.5, Inspection of Facilities; Sec. 2.1.8, Changes and Substitutions). Thus, Bell would be able to exercise additional--and we submit unnecessary--control over our operations. Furthermore, by attempting to distinguish between the responsibilities of AT&T and those of the IRCs, the tariff could lead to finger-pointing when a problem arises. Should this occur, it is the public which will ultimately suffer by receiving diminished service. RCA Globcom submits that the public interest requires the Commission to consider, in advance of the effective date of the instant Bell System tariffs, the potential impact of such tariff offerings on the present quality of international communications services by the IRCs.

2. The International Record Carriers Should Be Entitled to Obtain Their Facilities By IRU or Under Long-Term Leases At Carrier Rates

The IRCs have long been given the right to be partners on a full ownership basis* or to acquire by indefeasible right of user (IRU) interests in transmission facilities jointly used by AT&T and the IRCs for international and overseas services. The "entrance" circuits in issue in this proceeding are in fact the domestic "tails" of the international facility which the IRCs own and form an integral part of the international leg.** We also note that the Commission has accorded the IRCs the right in the past to acquire similar entrance facilities on an IRU basis.***

We submit that there are accordingly conceptual, pragmatic and actual differences between the facilities in issue and the local customer loops provided to the SCCs and DSCCs. Under the circumstances, the IRCs should be given the opportunity to acquire such facilities by IRU either in specific facilities or in a proportionate part of a group of facilities, any of which may be used to provide the "tails", or by other appropriate means (e.g., a long-term capitalized lease arrangement). Certainly, it would be improper, and contrary to the public interest, to force the IRCs to take such facilities, which are essential to their international operations, under a tariff structure intended for another purpose which is heavily weighted in favor of AT&T and fails to meet the legitimate needs and requirements of the public which uses the IRCs' services and facilities.

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* See TAT-4 Decision, 37 FCC 1151, 1157 (1964).

** We note that such circuits are normally covered by the Section 214 grant for the international facility or in proceedings relating thereto.

*** See, for example, RCA Global Communications, Inc., 19 FCC 2d 984, 986 (1969) (Guam Microwave Systems). Similar arrangements also apply to the Cayey, Puerto Rico Microwave System. 15 FCC 2d 1 (1968). The Commission also afforded the IRCs the opportunity to have an IRU interest in the AT&T Comstar Satellite System for service to Hawaii. GTE Satellite Corp., 49 FCC 2d 42, 53 (1974).

V. Conclusion

RCA Globcom submits that in the absence of rejection, Bell Tariff No. 4 and the related local tariffs of the Bell operating companies should properly be suspended for the full statutory period and subjected to an on-the-record investigation to determine whether they are "just and reasonable" as required by Section 201(b) of the Act; whether they are unreasonably discriminatory in contravention of Section 202(a) of the Act; whether they result in an unauthorized discontinuance of service contrary to Section 214(a) of the Act; and whether the tariff scheme proposed is in the overall public interest. We submit that an appropriate proceeding will find that this tariff fails to meet all of the foregoing statutory criteria. Without prejudice to our position set forth herein that monetary relief alone is an inadequate remedy, we submit that the Commission should impose in such proceeding an accounting order pursuant to Section 204 covering all charges which may be collected from the IRCs in excess of existing rates.

Respectfully submitted,
RCA GLOBAL COMMUNICATIONS, INC.

s/Francis J. DeRosa

s/Charles M. Lehrhaupt

June 21, 1977

Its Attorneys
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CERTIFICATE OF SERVICE

I, Phyllis M. Polay, hereby certify that on this 21st day of June, 1977, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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Phyllis M. Polay

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY, LONG)
LINES DEPARTMENT)
) Transmittal No. 12758
Proposed Revisions to Tariff)
F.C.C. No. 266, Facilities for)
Other Common Carriers)
)
and)
)
AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY, LONG)
LINES DEPARTMENT, NEW JERSEY)
BELL TELEPHONE COMPANY, PACIFIC)
TELEPHONE AND TELEGRAPH COMPANY)
and SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY) Transmittal No. 5
)
Proposed Bell System Operating Companies)
Tariff F.C.C. No. 4, Overseas Connecting)
Facilities for Other Common Carriers.)

To: The Commission

PETITION FOR SUSPENSION

ITT World Communications Inc. (ITT Worldcom) pursuant to Section 1.773 of the Commission's Rules and Regulations hereby submits its Petition for Suspension of the above-captioned matters for the maximum period permitted by statute. In support of this Petition, ITT Worldcom respectfully states:

In purported compliance with the Commission's Final Decision and Order in Docket No. 20452 (Final Decision)[1], American Telephone and Telegraph Company (AT&T) has filed proposed revisions to its Tariff F.C.C. No. 266 which allegedly "deletes the offering of facilities between specified points where the point is an overseas cable station or a satellite earth station utilized by the Telephone Company in the provision of its authorized overseas services."[2] Moreover, AT&T, in addition to certain Bell System Operating Companies[3], concurrently filed a new tariff offering entitled, Bell System Operating Companies Tariff F.C.C. No. 4, "Overseas Connecting Facilities for Other Common Carriers". This tariff seeks to offer the facilities deleted from the proposed revisions to Tariff F.C.C. No. 266 to carriers which are authorized to provide services to overseas points, namely, international record carriers (IRCs). In short, the proposed revisions offer intercity facilities whereas the new tariff offers entrance facilities from the IRCs' gateways to the overseas cablehead, earth station or radio site.

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[1] FCC 77-179, released March 23, 1977.

[2] Transmittal No. 12758, p. 1, dated May 27, 1977.

[3] The issuing carriers other than AT&T are New Jersey Bell Telephone Company, Pacific Telephone and Telegraph Company and Southern Bell Telephone and Telegraph Company.

Summary of Arguments

1. ITT Worldcom should be permitted to purchase, in accordance with previous Commission policies, indefeasible rights of use (IRU) in needed facilities for the provision of its services;

2. AT&T's proposed tariff revisions and its new proposed tariff should be suspended for the maximum period permitted by statute because they conflict with the Commission's Final Decision and Rules and Regulations in that,

   (a) AT&T, which has admitted that the provision of facilities to the IRCs is not identical to the provision of facilities to Other Common Carriers (OCCs), has failed to submit the appropriate cost justification required by Section 61.38 of the Commission's Rules and Regulations; and,

   (b) The proposed tariff filings conflict with Sections 61.74 and 61.55 of the Commission's Rules and Regulations because of improper cross-referencing of rates and charges to different tariffs which result in undue complications;

3. Acceptance of the instant tariff proposals prior to a ruling on ITT Worldcom's Petition for Reconsideration of the Final Decision [4] would constitute a denial of procedural due process.

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[4] ITT Worldcom, Petition for Reconsideration, dated April 25, 1977.

Factual Background

The Commission's Final Decision concluded that the contracts between AT&T and the IRCs for the provision of entrance and intercity facilities were inequitable and discriminatory. In support of this conclusion, the Commission noted that the provision of facilities by AT&T to the Specialized Common Carriers (SCCs) and the Domestic Satellite Common Carriers (DSCCs) is pursuant to tariff and contains different terms and conditions than the AT&T-IRC contracts. Accordingly, it was ordered that AT&T must provide intercity and entrance facilities to the IRCs on the same terms and conditions as it offers facilities to the SCCs and the DSCCs.5/

5/ The Commission also stated that the contractual arrangements between AT&T and the IRCs may be discriminatory with regard to the provision of MARISAT services by COMSAT General and ordered that the provision of facilities for this service be provided on the same terms and conditions to the IRCs and COMSAT General.

Although the Commission did not specify the manner in which this discriminatory treatment was to be rectified, it strongly suggested that "the most desirable means to insure that facilities of the kind in issue herein are provided to all carriers on reasonable and non-discriminatory terms is by the filing of tariff schedules."[6/] The Commission even went so far as to state that if facilities are offered by tariff to the IRCs, SCCs and DSCCs on identical terms and conditions that it would waive the requirements of Section 61.38 of its Rules and Regulations "until such time as AT&T files full justification for the various OCC facility offerings".[7/] However, the Commission specifically reserved the right to accept, reject, suspend or investigate "whatever may be filed" and absent "identical" terms and conditions, AT&T would be required to comply with Part 63 of the Commission's Rules and Regulations.[8/]

Subsequently, ITT Worldcom, in addition to Western Union International, Inc. (WUI) and RCA Global Communications, Inc. (RCA), filed a Petition for Reconsideration wherein it was demonstrated that the Commission's Final Decision raised serious questions of a factual nature

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6/ Final Decision, note 1 supra, at para. 17, p. 10.

7/ Id. at p. 10, n. 8. The Commission, however, held that within 30 days after the publication of its decision in the Federal Register, AT&T must file a letter giving a date certain for the submission of a full justification.

8/ Id.

hich will have a substantial impact upon the public interest and United States carriers' relations with foreign administrations. AT&T also recognized these questions and filed a Petition for Extension of Time in which to comply with the _Final Decision_ because of the complexities involved in attempting to equate the different facilities to the different carriers.[9/] Additionally, AT&T filed a Petition for Clarification of the _Final Decision_ because "[c]ertain facilities are furnished to specific IRCs which, for varying reasons, are unlike any facilities furnished to SCCs and DSCCs."[10/]

At present, no action has been taken by the Commission on any of these pleadings except AT&T's Petition for Extension of Time until May 27, 1977 in which to comply with the _Final Decision_.[11/]

[9/] AT&T, Petition for Extension of Time, dated April 13, 1977.

[10/] AT&T, Petition for Clarification, para. 3, p. 2, dated April 25, 1977.

[11/] Aside from the pleadings previously mentioned, WUI filed Comments dated April 21, 1977 in support of AT&T's Petition for Extension of Time, Reply Comments dated May 5, 1977 with respect to the petitions for reconsideration and a letter request dated May 20, 1977 for an extension of time within which AT&T was required to comply with the _Final Decision_. Moreover, ITT Worldcom and RCA on May 25, 1977 filed letters in support of this letter request. ITT Worldcom also filed Comments dated May 5, 1977 with regard to AT&T's Petition for Clarification and RCA filed a Request for Stay concurrently with its Petition for Reconsideration dated April 25, 1977. Other than denying the Request for Stay (_Order_, FCC 77-361, released June 9, 1977), the Commission has also not acted on any of these filings.

The Instant Proposals Should Be Suspended and ITT Worldcom Should Be Granted the Opportunity to Purchase IRU Interests in Facilities Utilized to Provide its Regularly Authorized Services

ITT Worldcom submits that the instant proposals should be suspended and that during the suspension period it be accorded an opportunity to purchase IRUs in both entrance and intercity facilities as an extension of its IRU interests in overseas facilities for the provision of its regularly authorized services.

It is axiomatic that an ownership interest in communications facilities results in lower charges to the public than would be the case if carriers must acquire such facilities by lease or under tariff. In ruling on IRC applications for authority to acquire IRU interests in several submarine cable systems, the Commission concluded:

> ...that the acquisition on an indefeasible right of user basis is at present the most efficient and economical means by which the international telegraph carriers may acquire facilities in various submarine telephone cable systems, will eliminate the substantial rentals such carriers are currently paying for lease of the circuits, and thus reduce the costs of furnishing service to the public. 12/

12/ Order, FCC 64-41, released January 22, 1964, p. 3.

This concept was reaffirmed by the Commission in a Second Report and Order[13] concerning ownership and operation of earth stations when it stated:

> We find that the most logical and equitable formula is one under which ownership is reasonably related to use. Any major departure from this principle would, in essence, mean that a carrier ready, willing, and able to pay for facilities which it actually requires to handle traffic would be required to lease them from a second carrier. The sole function of the second carrier would be that of the investor in facilities on which such second carrier would realize a return at the expense of the first-carrier user. 14/

Similarly, in its Memorandum Opinion and Order in Docket No. 20201[15] the Commission, in addressing the subject of "appropriate access" to earth stations and paraphrasing the positions of WUI and ITT Worldcom, stated:

> ...The Commission has repeatedly determined that the carriers' revenue requirements are favorably lower when their services are rendered via owned rather than leased facilities...WUI and ITT are not seeking any subsidy, but rather an investment position in the relevant earth stations...16/

13/ 5 F.C.C. 2d 812 (1966).

14/ Id. at 818-819.

15/ 49 F.C.C. 2d 42 (1974).

16/ Id. at 48.

Continuing, the Commission later stated that "[u]pon consideration of the arguments made by the record carriers...we are inclined to the view that the record carriers should have access to the relevant earth stations...on the basis sought by WUI and ITT", that is, the purchase of IRUs.[17]

In short, the Commission has recognized and approved the acquisition of IRUs by the IRCs in both cable and satellite earth segment facilities for access to connecting circuitry in the provision of their regularly authorized services because they are the most efficient and economical means by which IRCs may acquire these facilities.

This established Commission policy should also be applicable to the acquisition of entrance and intercity facilities. ITT Worldcom does not offer domestic services but rather offers services between domestic and overseas points. In providing these services it employs both cable and satellite facilities. ITT Worldcom, on the basis of use, possesses IRU interests in cable circuits in recognition that this is the most efficient and economical means of acquiring these facilities. For example, if a subscriber of

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[17] *Id.* at 53. In recognition of this inclination, AT&T and GTE Satellite Corporation have agreed to sell the IRCs IRUs in the domestic satellite earth stations.

ITT Worldcom located in San Francisco requires a telex circuit to London, ITT Worldcom will acquire the necessary connecting or intercity facilities between San Francisco and New York. From New York ITT Worldcom must then obtain additional connecting or entrance facilities to the cablehead or earth station. In the case of a cablehead, ITT Worldcom will connect the entrance facility to its own cable circuitry in which it has an IRU interest which, in turn, is connected to the cablehead located in the United Kingdom. The intercity and entrance facilities, therefore, are natural and logical extensions of the overseas connecting facilities in which ITT Worldcom already possesses IRU interests. However, at the present time, all of the facilities acquired to the domestic cablehead have been by lease. AT&T now proposes to tariff these facilities. In other words, although ITT Worldcom can realize reduced revenue requirements on the cable segment of its service, it must incur increased revenue requirements on the domestic segment of its service. .

It is difficult to imagine any rationale which would justify the payment of unnecessary additional costs which ITT Worldcom would avoid by acquisition of IRU interests in the facilities in question. If the Commission recognizes the public interest benefit of IRU interests in cable and earth station facilities, the same reasoning should hold equally true with regard to the domestic portions of international service offerings, namely:, intercity and entrance facilities.

ITT Worldcom stands ready, willing and able to purchase IRU intersts in the facilities which it actually requires to handle traffic. ITT Worldcom submits that this question should be answered before the proposals which are the subject of this Petition are acted upon by the Commission.

AT&T's Proposals Conflict With The Commission's Final Decision

As stated earlier, the *Final Decision* stressed the Commission's desire for the submission of tariff schedules for purposes of providing facilities to carriers. In this connection, the Commission, in addition to specifically retaining its authority to reject, suspend or investigate any AT&T proposal, warned that if tariff proposals filed by AT&T did not result in identical "rates and conditions" for the IRCs, COMSAT General, SCCs and DSCCs, any differences had to be justified in accordance with Section 61.38 of its Rules and Regulations in addition to the submission of "other data".[18] The Commission stated that if such terms and conditions were identical it would waive the requirements of Section 61.38 but AT&T would be required to submit a letter "within 30 days of the publication of this decision in the Federal Register" stating the date on which cost support material would be filed[19]

However, the filings in Docket No. 20452 by ITT Worldcom and other carriers have amply demonstrated to the Commission that facilities presently provided to the IRCs are not, and cannot be, identical to the facilities provided to SCCs and DSCCs because of factors inherent in the nature of IRC services. These factors include arrangements such as cooperative testing and uniform standards of engineering, billing, facility restoration and transmission which have been mutually agreed to among the carriers. In the absence of IRU interests by the IRCs[20] which would permit these types of arrangements, the present contracts offer the most economical means of providing "...a rapid, efficient...world-wide wire and radio communications service..."[21] Conversely, alteration of these arrangements will be detrimental to the public interest and substantially disrupt the long-standing recommendations, agreements and understandings among all the nations of the world.

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[18] See note 7 *supra*.

[19] *Id*.

In any event, in the face of these historical and time-honored developments, the Commission has ordered and AT&T has filed terms and conditions for the provision of overseas facilities which attempt to treat IRCs, SCCs and DSCCs identically. Apparently feeling that the terms and conditions contained in the new proposed Tariff F.C.C. No. 4 are identical to the terms and conditions by which facilities are provided to OCCs, AT&T has not filed any cost support material as required by Section 61.33 or any "other data". Similarly, AT&T has not provided supportive data with regard to its proposed revisions to Tariff F.C.C. No. 266.

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[20] See *supra*, at pp. 7-11.

[21] 47 U.S.C. Section 1.

On the other hand, AT&T recognized the difficulty of identical treatment and referred to its Petition for Clarification which described "a number of unique situations which may not have been contemplated by the Commission".[22] These "unique situations" include the provision of telegraph grade circuits, high frequency interfaces, international restoration plans, part-time intercity television facilities and group, master-group and super-group channels, among others.[23] AT&T stated that "[p]ending such clarification, the material filed herein does not provide for these situations."[24] Therefore, the instant tariff filings by AT&T's

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[22] AT&T, Transmittal No. 5, p. 3, dated May 26, 1977.

[23] AT&T note 10 *supra*. See also, ITT Worldcom, note 4 *supra*; ITT Worldcom, Comments, dated May 5, 1977. AT&T's Transmittal No. 5 which accompanies its proposed Tariff F.C.C. No. 4, after noting the requirement for facilities coordination between AT&T, COMSAT and foreign administrations and the establishment of engineering standards in conformance with CCITT recommendations, stated:

> It has been in the public interest, therefore, to engineer these overseas facilities, in cooperation with COMSAT and Foreign Administrations [sic], so that voice grade connections to these facilities may be accomplished, as appropriate, at overseas cable stations, radio sites, satellite earth stations or at other than these locations. (AT&T, note 22 *supra*, p. 2).

AT&T then proceeded to describe a mode of testing which is unique to overseas facilities.

[24] *Id*. at p. 3.

admission do not contain any terms and conditions which address certain "unique situations" which "are unlike any facilities furnished to SCCs and DSCCs." In short, the instant proposals do not offer facilities to the IRCs on identical terms and conditions as offered to SCCs and DSCCs.

Accordingly, the Final Decision requires AT&T to submit supporting data in compliance with Section 61.38 of the Commission's Rules and Regulations. Absent this submission, the proposed revisions to Tariff F.C.C. No. 266 and the proposed Tariff F.C.C. No. 4 cannot stand and must be, at the very least, suspended until such data is furnished and interested parties are given an opportunity to comment on it.[25/]

[25/] The Commission's Order in Docket 20452, released June 9, 1977 (FCC 77-361) which denied RCA's Request for Stay of the Final Decision also recognized AT&T's reservations as expressed in its Petition for Clarification and stated:

> Since our Decision recognized that AT&T might provide the facilities in question to the IRCs on different terms and conditions with appropriate justification...it is possible that many of the concerns the IRCs state in the petitions could be alleviated in light of the tariff revisions and justification filed. (Id. at para. 3, p. 2)

Thus, the Commission concluded that AT&T must submit appropriate justification for the differences, among others, stated in its Petition for Clarification. As shown above, AT&T has not complied with this requirement and, therefore, it is not possible "that many of the concerns the IRCs state" can be alleviated.

AT&T's Proposals Conflict With the Commission's Rules

Section 61.74 entitled, "References to other instruments", explicitly prohibits reference by one tariff to a different tariff or to any other document or instrument. An exception is provided only in the case of two tariffs where cross-referencing is permitted "for other matter applicable to such service" provided the reference is made by a carrier which is a party to both tariffs and provided that "such reference does not result in undue complication."[26/]

AT&T's instant proposals are replete with cross-references[27/] which do not fall within any exception. In proposed Tariff F.C.C. No. 4 the rates and charges for facilities, conditioning and special construction are all cross-referenced to AT&T Tariff F.C.C. No. 266 or to Bell System Operating Company's' "Facilities For Other Common Carriers" tariffs. Rates and charges, however, are not "other matter applicable to such service" as stated in Section 61.74.

Costs, and the rates and charges based on those costs, are basic to "the formulation of the essential regulatory judgments [the Commission] must make with respect to the lawfulness under the Communications Act of new or revised rates tendered by Common Carriers."[28/] It is

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[26/] 47 CFR Section 61.74 (b).

[27/] See e.g., Tariff F.C.C. No. 4, Section 41, 4.2 and 4.3, Original Page 17, Effective August 25, 1977.

[28/] *Tariffs-Evidence*, 25 F.C.C. 2d 957, 965 (1970).

inconceivable that the term "other matter" would pertain to costs and, hence, rates and charges which are the crux of any tariff.[30] Indeed, Section 61.55 of the Commission's Rules and Regulations states that a tariff shall not contain a "rule, regulation, exception, or condition...which in any way attempts to authorize the substitution for any rate named in the tariff of a rate named in any other tariff."[31] AT&T has clearly violated this prohibition.

Moreover, the cross-referencing in question results in undue complication. For instance, AT&T's cross-references for facilities under Tariff F.C.C. No. 4 state that the rates and charges "are the same as those rates and charges specified for the same types of facilities in the American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C No. 266" or "Bell System Operating Company's 'Facilities

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[30] The inappropriateness of this result is glaringly evident by the provision of group, master-group and super-group channel facilities to the IRCs by AT&T at an increased efficiency and lower cost than single-channel facilities.. Yet, AT&T's proposals cross-reference its rates and charges to single-channel facilities.

[31] 47 CFR Section 61.55(h).

For Other Common Carriers' tariff" depending upon where the terminal points are located. However, Tariff F.C.C. No. 266 states that "[t]he rates for facilities provided under this tariff, are the same as those listed in the American Telephone and Telegraph Company Tariff F.C.C. No. 260".[31] In short, an interested carrier must scrutinize the applicable provisions of three tariffs in addition to the applicable Bell System Operating Company tariff before finding the appropriate rate.

This is clearly the type of "undue complication" Section 61.74 was designed to prohibit. As stated in Section 61.55 of the Commission's Rules and Regulations entitled, "Composition of tariffs", tariffs shall contain, among other things, "[c]lear and explicit explanatory statements";[32] "[a] clear and definite statement of the general rules, regulations, exceptions, and conditions which govern the tariff"[33] and "[a]n explicit statement of the charges...all arranged in a single and systematic manner".[34]

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[31] Tariff F.C.C. No. 266, Section 4.2.1, 5th Revised Page 21, Effective April 7, 1976. See also, id., Section 4.3, 3rd Revised Page 22, Effective May 15, 1975.

[32] 47 CFR Section 61.55 (f). (Original in italics).

Moreover, and as the Commission is aware, AT&T must file rates for its interstate services in conformance with revised Fully Distributed Cost (FDC) Method 7 using revised FDC Method 1 as a benchmark.[35] Although AT&T was required to file this material by June 8, 1977, a Commission *Memorandum Opinion and Order*[36] has authorized staggered filings during the period June 8, 1977 to August 8, 1977 for particular services, some of which are contained in either Tariff F.C.C. No. 266 or 260, or both. Moreover, AT&T's Tariff F.C.C. No. 266 is and has been subject to Commission inquiry in Docket No. 20814 and its recent revisions to this tariff[37] are now part of that investigation.[38] In light of this regulatory chaos regarding both the submission of a complete datum based on revised FDC Methods 1 and 7 and the current investigation concerning AT&T's Tariff F.C.C. No. 266, the instant tariff proposals should be suspended in order to give the IRCs an opportunity to assess the revenue-cost relationship of these filings in terms of AT&T's other services. It is essential, therefore, that AT&T file its FDC studies for all sixteen of its services before the instant filing can be properly evaluated.

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[33] *Id.* at (g).

[34] *Id.* at (h).

[35] Docket No. 18128, 61 F.C.C. 2d 587 (1976).

[36] Docket No. 18128, FCC 77-332, released May 20, 1977.

[37] AT&T, Transmittal No. 12716, dated March 23, 1977.

[38] *Memorandum Opinion and Order*, Docket No. 20814, FCC 77-383, released June 13, 1977.

Acceptance Of The Instant Tariff Proposals Prior To A Ruling On ITT Worldcom's Petition For Reconsideration Is A Denial Of Procedural Due Process

ITT Worldcom, in addition to WUI and RCA, timely filed a Petition for Reconsideration of the Commission's *Final Decision*. Although the Commission has neither granted nor denied this request, an acceptance of the instant tariff proposals would effectively render these Petitions moot. A clearer violation of elementary principles of fair play and procedural due process would be hard to imagine.

In enacting the Communications Act, Congress specifically provided for a statutory scheme whereby an aggrieved or adversely affected party can, as a matter of procedural right, request the Commission to reconsider its actions.[39] This legislative proviso is found in Section 405 of the Communications Act[40] which states, in part:

> The Commission, or designated authority within the Commission, *shall enter an order, with a concise statement of the reasons therefor,* denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate...[41]

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[39] See *Black River Valley Broadcasts* v. *McNinch* 101 F. 2d 235 (D.C. Cir. 1938), *cert denied* 307 U.S. 623 (1939).

[40] 47 U.S.C. Section 405.

[41] *Id.* (Emphasis supplied). Cf. 47 CFR Section 1. 106 (j).

The Commission, therefore, faced with a petition for reconsideration, must, at the very least, enter an order denying or granting the petition with a concise statement of the reasons therefor. Stated differently, "the purpose of the law is defeated if the Commission declines to act upon such petitions when they are filed, or dismisses them without consideration".[42]

The Petition for Reconsideration of ITT Worldcom requested the Commission to reconsider its conclusions as set forth in the Final Decision, recognize the validity of the AT&T-IRC contracts for entrance and intercity facilities in the provision of the IRCs regularly authorized services and permit ITT Worldcom to continue to acquire these international facilities pursuant to the existing contract between AT&T and ITT Worldcom. In support of this request, ITT Worldcom demonstrated that the terms and conditions under which the IRCs and COMSAT General must conduct MARISAT services are identical, that the IRCs, in comparision to the SCCs and the DSCCs, do not provide like services under like circumstances, that the public interest questions raised by a modification or abrogation of the present operating arrangements of the IRCs are substantial, that the effect of the Final Decision is to prescribe charges, classifications, regulations and practices without a full opportunity for hearing and, lastly, that the Commission's decision is unsupported by the record.

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[42] Southland Industries v. F.C.C., 99F. 2d 117, 122 (D.C. Cir. 1938). See also, note 39 supra, at 239. ITT Worldcom is not contending that a grant of a petition for rehearing is a matter of right rather, that it is entitled to receive a concise statement disposing of its Petition before the Commission takes any action on the subject tariff filings which would render such petition academic and undercut ITT Worldcom's chances of obtaining a stay pending judicial review of a Commission decision denying such Petition.

ITT Worldcom, therefore, in addition to RCA, WUI and AT&T, has raised substantial questions of fact which conflict with the basic premise upon which the Commission based its Final Decision, that is, the provision of like services under like circumstances by AT&T to the IRCs and OCCs. If the Commission permits AT&T's tariff proposals to become effective, ITT Worldcom's Petition for Reconsideration, however meritorious, will have been effectively denied without due process. If the Commission feels that ITT Worldcom's Petition for Reconsideration raises unresolved issues of fact -- e.g., whether service provided by the IRCs and OCCs is identical -- it should suspend the subject tariff filings and conduct an expedited evidentiary hearing and investigation for the purpose of resolving these disputed factual issues.

Conclusion

Although AT&T's instant tariff proposals attempt to offer facilities to IRCs and OCCs on identical terms and conditions, the factual issue, among others, of whether these carriers provide like services under like circumstances is still unresolved. The Final Decision which held that the provision of facilities to the IRCs by contract and the provision of facilities to the OCCs by tariff represented discriminatory treatment, which by implication was unjust or unreasonable, is bottomed on an assumed answer to the unresolved factual question.

ITT Worldcom, WUI, RCA and AT&T have submitted various pleadings addressed to this question all of which support the contention that the IRCs obtain unique facilities which are indigenous to international communications. The Commission has not as yet ruled on these pleadings and the instant tariff filings, by AT&T's own admission, do not cover "unique situations which may not have contemplated by the Commission."

In view of the substantial unresolved questions of fact presented which go to the very foundation of the Final Decision, the instant tariff proposals are premature. They also, for the reasons above stated, are in conflict with and violate the Commission's Final Decision and Sections 61.38, 61.74 and 61.55 of the Commission's Rules and Regulations.

ITT Worldcom, therefore, requests that the subject tariff filings be suspended for the maximum period permitted by statute and the Commission immediately initiate an expedited hearing which should include as issues whether the facilities provided to the IRCs, SCCs and DSCCs are for like services under like circumstances; whether any discrimination which may exist between the rates presently accorded the IRCs by contract and the rates accorded the SCCs and DSCCs are just and reasonable; whether the tariff provisions filed by AT&T are just and reasonable; and, whether AT&T should be required to accord the IRCs IRU interests in the facilities in question.

Respectfully submitted,

ITT WORLD COMMUNICATIONS INC.

By

Joseph J. Jacobs

Randall B. Lowe

Its Attorneys
67 Broad Street
New York, New York

Dated: June 21, 1977

CERTIFICATE OF SERVICE

I, Valerie Carrasco, hereby certify that on this 21st day of June, 1977 I mailed to each of the following persons, by United States mail, postage prepaid, a copy of the foregoing "Petition for Suspension" of ITT World Communications Inc.

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x

Mr. F. M. Widener
Assistant Vice President
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Mr. Boyd M. Guttery.
Assistant Vice President
Southern Bell Telephone and Telegraph Company
P. O. Box 2211
Atlanta, Georgia 30301

Valerie Carrasco
Valerie Carrasco

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
BELL SYSTEM OPERATING COMPANIES	)	
	)	
Proposed Tariff F.C.C. No. 4, Overseas Connecting Facilities for Other Common Carriers, Proposed Revisions To Tariff F.C.C. No. 266, Facilities for Other Common Carriers.	))))))	Transmittal No. 5 Transmittal No. 12758 Docket No. 20452

To: The Commission

PETITION FOR SUSPENSION AND INVESTIGATION

Western Union International, Inc. (WUI) hereby petitions the Commission to suspend the above-captioned tariffs filed by American Telephone & Telegraph Company (AT&T) on behalf of the Bell System Operating Companies for the maximum period permitted under Section 204 of the Communications Act of 1934, as amended, (the Act), and to institute an immediate investigation to determine whether this tariff is just and reasonable within the meaning of Section 201(b) of the Act and unreasonably discriminatory in violation of Section 202(a) of the Act.

1. WUI has concurrently filed with the Common Carrier Bureau a Petition for Rejection of the above-captioned tariffs.

WUI strongly believes that the remedy of rejection is the only fair and proper procedure in light of the ex parte contacts by A.T.&T. with the Commission Staff in violation of: (a) Home Box Office, Inc. v. F.C.C., Case No. 75-1280 (D.C. Cir. March 25, 1977); and (b) both the Order instituting this Docket No. 20452 and the Commission's Rules dealing with ex parte presentations in restricted rulemaking proceedings. The tariffs now at issue have been irreversibly tainted.

2. Without impugning the motives of either the dedicated Commission Staff or of A.T.&T., WUI has objected (in its Motion for Extension of Time of May 20, 1977, and in its concurrent Petition for Rejection) to their ex parte contacts which were acknowledged in the Commission's letter of June 24, in response to WUI's June 10 request under the Freedom of Information Act. Since A.T.&T. stands to gain up to $5 million a year in additional revenues from WUI and the other IRCs by virtue of the subject tariffs, these ex parte contacts are particularly detrimental to the legal rights of WUI, who unsuccessfully requested conferences, hearings, and oral arguments involving all parties:

> ¶"We trust that you will agree with our request to review this matter at a Bureau/industry meeting, rather than through a flood of advocacy pleadings which will unneccessarily burden both the Bureau and the industry." WUI Letter of June 19, 1974 to Common

Carrier Bureau who had requested A.T.&T. to file tariffs abrogating the existing contracts for our tail circuits.

¶ITT in its Comments, dated June 23, 1975, requested an evidentiary hearing pursuant to Section 205(a) of the Communications Act.

¶WUI in its Reply dated July 8, 1975, asked for a joint industry-Commission conference to deal with the issues raised by this proceeding.

¶WUI in its Petition for Reconsideration, dated April 22, 1977, requested both an evidentiary hearing and an oral argument; and reiterated this request in its Reply Comments, dated May 5, 1977. Both ITT and RCA also requested evidentiary hearings in their respective Petitions for Reconsideration of April 22, 1977.

3. Although none of the foregoing requests have been granted, AT&T and the Commission Staff conducted ex parte meetings on March 24, March 31, April 20 and May 18, 1977.

4. The resulting taint on the subject tariffs cannot be removed by a suspension and hearing, even accompanied by an accounting order. A suspension/hearing proceeding is akin to a ticking time bomb whose explosion at the end of the suspension period, but prior to a Commission decision, is inevitable. Moreover an accounting order cannot protect us against business losses of the type illustrated by RCA on page 9 of its Petition for Rejection, dated June 21, 1977. If the RCA service-deficit illustration were transposed to the Mainland/Hawaii route where AT&T is a direct competitor of the IRCs, the inequity of AT&T's proposed tariffs becomes most glaring.

5. Only a rejection of the subject tariffs can remove their ex parte taint. However, in the event that the Commission determines not to reject, we believe at the very least, suspension and investigation of the tariffs are required.

6. It is not the intention of WUI to expand the size of the voluminous files maintained by the Commission in this matter. The issues to be investigated during an evidentiary hearing have been most thoroughly dealt with in pleadings filed by WUI and the other IRCs. WUI hereby incorporates by reference its Petition for Reconsideration of April 22, 1977, Reply Comments of May 5, 1977 and Petition for Rejection of July 6, 1977, as well as the respective Petitions for Rejection and Suspension filed by RCA and ITT on June 21, 1977.

7. The above-referenced documents delinate the following issues to be investigated during an evidentiary hearing:

a) Full disclosure of all representations and discussions during the ex parte meetings between the Commission's Staff and AT&T;

b) Whether the tariff provisions are just and reasonable;

c) Whether the waiver of Section 61.38 of the Commission's Rules with reference to the tariff filing is proper;

d) What are the relevant AT&T costs of providing tail circuits to the IRCs;

e) The effect of the changes of operational practices made by the proposed tariffs;

f) Whether the provisions of the proposed tariffs create unjust and unreasonable discrimination in charges for facilities in connection with like communication service (within the IRC classification, between the IRCs and foreign telecommunications entities, and between the IRCs and other U.S. carriers);

g) The propriety of applying intrastate rate levels to international facilities;

h) Whether the proposed tariffs effect a discontinuance and reduction of service in violation of Section 214 (a) of the Communications Act;

i) Whether the tariff provisions filed by AT&T are in the public interest;

j) Whether AT&T should be required to accord the IRCs IRU interests in the subject facilities;

k) Whether the facilities provided by AT&T to the IRCs are different or like facilities to those provided by AT&T to the SCCs and DSCCs, and to foreign telecommunications entities transiting the U.S.

l) The effect the higher tariff rates should have on the contract rates charged foreign telecommunications entities for U.S. transiting facilities by AT&T, and the reactions of foreign administrations to any increase in their rates;

m) The effect that the abrogation of the AT&T - IRC contracts would have on existing cooperative testing of the tail circuits from the cable/satellite stations;

n) The effect of the tariffs upon the tail circuits provided to the IRCs in connection with international circuit restoration plans which not only affect the IRCs, but also involve Comsat and foreign correspondents; and

o) The effect that the abrogation of the AT&T - IRC contracts would have on the existing circuits group transmission technologies now used to provide the IRCs with access to the cable and earth stations.

WHEREFORE, WUI respectfully requests that the Commission suspend AT&T's proposed tariffs for the full statutory period, and institute an immediate investigation as to the lawfulness of the rates and regulations proposed therein.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

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Dated: July 6, 1977

CERTIFICATE OF SERVICE

I, Diane A. DiNoia, hereby certify that a copy of the foregoing Pleading of Western Union International, Inc., has been sent by United States mail, postage prepaid to the following:

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/s/ Diane A. DiNoia

July 6, 1977

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
BELL SYSTEM OPERATING COMPANIES)
)
Proposed Tariff F.C.C. No. 4,) Transmittal No. 5
Overseas Connecting Facilities)
for Other Common Carriers)

To: Chief, Common Carrier Bureau

PETITION FOR REJECTION

RCA Global Communications, Inc. (RCA Glōbcom) hereby petitions the Commission to reject* proposed Tariff F.C.C. No. 4 of the Bell System Operating Companies (hereafter "Bell" or "AT&T") issued May 27, 1977 under Letter of Transmittal No. 5 to become effective August 25, 1977.** The subject tariff was filed in purported compliance with the Commission's Final Decision and Order in Docket No. 20452, 42 F.R. 16177 (March 25, 1977), to establish rates and regulations applicable to the provision of facilities to the international record carriers (IRCs) connecting the overseas cable stations, satellite earth stations and radio sites with the IRCs' operating centers in the "gateway" cities authorized by the Commission.* These circuits are the essential extensions or international "tail" circuits which bring the international transmission facility into the operating offices of the carriers, including the AT&T Long Lines Department.** As such, they are integral parts of circuits used for foreign or overseas communication. The other category of connecting facilities covered by the Commission's Final Decision and Order in Docket No. 20452 (the so-called "intercity" facilities) which link the IRCs' gateway offices would hereafter be provided pursuant to AT&T Long Lines Department Tariff F.C.C. No. 266, rather than under the instant tariff.

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* For the reasons set forth herein, RCA Glōbcom submits that this tariff should properly be rejected by the Commission and returned to Bell. However, in the event the Commission determines not to reject, we are filing simultaneously herewith a petition for suspension and investigation of this tariff. See American Telephone and Telegraph Co. Docket No. 21122, released February 23, 1977, FCC 77-124; RCA American Communications, Inc. Docket No. 21139, released March 23, 1977, FCC 77-175.

** RCA Glōbcom also hereby petitions to reject related amendments to tariffs filed by the New Jersey Bell Telephone Company (Tariff F.C.C. No. 33), the Pacific Telephone and Telegraph Company (Tariff F.C.C. No. 126) and Southern Bell Telephone and Telegraph Company (Tariff F.C.C. No. 55).

RCA Globcom submits that rejection is warranted on the grounds that there has been no showing that the tariff scheme proposed to replace the intercarrier contracts, pursuant to which these facilities were previously provided to the IRCs, is "just and reasonable" in accordance with Section 201(b) of the Act in view of the special requirements applicable to the international entrance facilities in issue; that the tariff will result in unlawfully discriminatory charging provisions for identical facilities depending upon whether such facilities are taken on the East Coast or the West Coast contrary to Section 202(a) of the Act;* and that this tariff will result in a "discontinuance, reduction, or impairment of service" previously provided without appropriate Section 214 authority.** We further submit that this tariff should in no event be allowed to become effective until such time as the Commission rules on the pending reconsideration requests before it and addresses in appropriate proceedings the outstanding questions of law and fact raised in those pleadings.

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* Unlike AT&T Long Lines, the IRCs do not provide service between points within the continental United States and are authorized by the Commission to receive overseas traffic directly from customers or to deliver traffic overseas directly to customers only in five so-called "gateway" cities--New York, Washington, San Francisco, Miami and New Orleans.

** The IRCs' overseas circuits are provided through various submarine cables, which the IRCs jointly own and concurrently use with AT&T, see. e.g., TAT-6 Decision, 35 F.C.C. 2d 801, 822-23 (1972), and through the Intelsat satellite system, which is used by all overseas carriers, see Overseas Communications, 30 F.C.C. 2d 571 (1971).

We also wish to point out at the outset that if there is an increase in charges to the IRCs to the levels contained in the present OCC tariffs, these costs will inevitably have to be reflected in the IRCs' charges to the public. Indeed, charges for certain services, particularly wideband leased channel services on which the carriers at present are not making an adequate return, may necessarily have to be increased or the IRCs will suffer out-of-pocket losses. For example, as shown in Attachment A to RCA Globcom's "Petition for Reconsideration", we estimate that if we are required to pay OCC rates to extend 50 kbs leased satellite channels from the international earth stations to our operating centers, the monthly rates to the public could increase as much as $5,300 in the case of service from San Francisco and $3,300 in the case of service from Washington, D.C. via Etam.

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* Insofar as the tariffs of New Jersey Bell, PT&T and Southern Bell are concerned, it is our position that they should be rejected as intrastate tariffs, improperly applied to a "foreign" service.

** We further note that no justification or explanatory data for the rates proposed has been provided as required by Section 61.38 of the Commission's Rules, including the specific data necessary to support the "rate increase" which will result to the IRCs and their customers from adoption of this tariff as set forth in subparagraph (d) of that Section. While we recognize that the Commission has waived the requirements of Section 61.38 in the event service is offered on identical terms included in tariff offerings to DSCCs and SCCs pending the filing of "full justification" under that Section (Final Decision and Order in Docket No. 20452, Para. 17, Note 8), we do not view this as a license to burden the users of the international record carriers' service with significantly higher charges without providing any rationale or justification for such action.

The Instant Tariff Filing
Has Not Been Shown To Be "Just and Reasonable"
In Accordance with Section 201(b) of the Act

Accepting *arguendo* the Commission's legal analysis and decision in Docket No. 20452,* Bell was required to take steps to comply with the Commission's decision in that docket. In denying RCA Globcom's request for stay of the Final Decision and Order in Docket No. 20452, the Commission specifically stated that that "[d]ecision recognized that AT&T might provide the facilities in question to the IRCs on different terms and conditions [than were provided in the existing OCC tariffs] with appropriate justification."** The Commission further specifically indicated that it would not automatically accept any tariff submission, but "reserve[d] the right to... reject, suspend or investigate whatever may be filed."*

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* We note in this regard that we have raised an issue on reconsideration that the Commission in fact was prescribing or authorizing rates in Docket No. 20452 without following the procedures required by law under Section 205 of the Act. *American Telephone and Telegraph Company v. FCC*, 487 F. 2d 865 (2d Cir. 1973). (Actual impact of agency action and not its form is determinative.) We believe the actions taken by Bell in this proceeding in response to the Commission's decision by merely replacing the IRC contract rates with its higher OCC tariff rates reinforces our position on this issue.

** Order released June 9, 1977, FCC 77-361, Para. 3.

We submit that if this tariff scheme were permitted to take effect, AT&T could be accorded a "windfall" at the expense of the IRCs and their customers and the IRCs would be needlessly burdened by operational problems without any showing whatsoever that the approach taken is either justified by legitimate cost or operational considerations or required by the Commission's decision in Docket No. 20452. Thus, without any rationale being supplied to support such action, the IRCs will be charged significantly higher rates for the same (or in some cases less) service than they have long received under contract; the terms under which certain facilities have heretofore been provided will be changed; and various facilities offerings will be eliminated without lawful authority to the detriment of the user.

These considerations are particularly relevant given the special facts and operational practices which apply to facilities used in direct conjunction with international transmission facilities (as opposed to the provision of domestic connecting customer loops).** These factual differences, moreover, are expressly recognized by Bell. Thus, the instant Bell Tariff F.C.C. No. 4 covers only international

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* Final Decision and Order in Docket No. 20452, Para. 17, n. 8.

** The distinctions between IRC operations and those of the domestic carriers obtaining facilities under AT&T Tariff F.C.C. No. 266 are set forth at length in RCA Glōbcom's Petition for Reconsideration in Docket No. 20452.

"entrance" facilities terminating at the international cableheads and earth stations. These facilities are treated separately (though charged for on the same basis) from "intercity" facilities which would be provided under AT&T Tariff No. 266.

Furthermore, the tariff scheme proposed would change the nature of certain facilities offerings. For example, Bell's practice under the IRC contracts of providing the IRCs with voice grade circuits having a fixed loss is not incorporated in this tariff.* Any loss between 0 and 16 db is permitted. The tariff also eliminates categories of facilities offerings. Thus, there is no longer any provision for short-term temporary facilities as were provided under the IRC contracts. Rather, all facilities must be taken (and paid for) for at least a 30-day minimum period.

We submit that the law is now well settled that Bell may not by tariff arbitrarily impose restrictions, requirements or costs on other carriers.** In view of the absence of any showing that the rate and service scheme which would be applied to the IRCs here is "just and reasonable" in accordance with the statutory standard, this tariff should be rejected.

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* The operational problems caused by such action are discussed in RCA Globcom's Petition for Reconsideration.

** See, e.g., American Telephone and Telegraph Co., et al, 60 FCC 2d 939 (1976); Use of Satellite Facilities for Certain Services Having Access to the Switched Telephone Network, FCC 76-766, released August 11, 1976.

The Tariff Would Create An Unlawful Discrimination Between Entrance Facilities Provided On the East and West Coasts

At present, the IRCs take entrance facilities on both coasts of the U.S. under uniform contract arrangements. Under the instant proposal, entrance facilities between the IRCs' east coast operating centers and the principal transatlantic facilities would be provided at the rates specified in AT&T Long Lines Department Tariff F.C.C. No. 266. However, the very same facilities between the international record carriers' west coast operating centers and the principal transpacific facilities would have to be taken at the higher charges specified in Pacific Telephone and Telegraph Company Tariff F.C.C. No. 126. This is due to the fact that the IRCs' San Francisco gateway offices (the only west coast gateway which the IRCs are presently authorized) and the Jamesburg earth station and the terminals of the three Mainland/Hawaii cable systems are all located within the State of California. A similar disparity would apply to facilities wholly within the State of Florida taken under Southern Bell tariffs.

The discriminatory effect of this disparity is apparent when one views the following comparison of the rates presently paid by the IRCs for voice-grade circuits from their gateways to selected cableheads and satellite earth stations with the amounts which would be charged pursuant to the proposed tariffs.

Terminals	Mileage	Present Charges $	Proposed Charges $	Percent Increase %	Bell Carrier
S.F. - Jamesburg	100	121.43	467.70	285.2	PT&T
S.F. - San Luis Obispo	201	167.95	893.52	431.8	PT&T
Miami - Jacksonville	325	308.84	838.00	171.3	S. Bell
N.Y. - Etam	316	219.63	386.60	96.6	AT&T
N.Y. - Greenhill	139	140.05	309.70	121.1	AT&T

Based on all circuits currently being leased by RCA Glōbcom, we anticipate total increased costs amounting to approximately $1.7 million annually if these tariffs are permitted to go into effect, with the percentage increases distributed as follows:

AT&T Long Lines	49.9%
Pacific Telephone and Telegraph	326.7%
Southern Bell Telephone Company	207.2%

We submit that this patent discrimination between like entrance facilities depending upon geographic location, i.e., whether such facilities connect to a transatlantic or transpacific cable or satellite circuit, is prima facie unlawful under Section 202(a) of the Act and warrants rejection of the instant tariff filing.*

The Bell Tariff Discontinues or Impairs Various Categories of Service Without Requisite Authority

The facilities which are proposed to be offered pursuant to Tariff F.C.C. No. 4 are limited to Voice Grade, Voice Grade Data, 50 kbps Data and 56 kbps Data. However, pursuant to practices which have applied under the present contract arrangements, RCA Glōbcom has in addition been able to acquire from AT&T groups or super groups of voice grade facilities. This offering is also made available by AT&T to domestic satellite carriers pursuant to its Tariff F.C.C. No. 265. The IRCs further currently may obtain under contract temporary circuits for short-term use from AT&T

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* See American Trucking Association v. FCC, 377 F. 2d 121, 130 (D.C. Cir. 1966), cert. denied, 386 U.S. 943 (1967).

at lower than monthly rates. Under the proposed tariffs, such temporary service is discontinued.

Such temporary facilities are currently employed by the IRCs to provide essential communications in connection with various requirements including presidential trips abroad and major sporting events. As shown below, the instant proposal will make future IRC temporary service uneconomic at anything approximating current charges:

One Day Temporary Leased Satellite
Circuit to Europe

	Present Costs	Projected Costs
	$	$
International satellite circuit	285.00	285.00
Terrestrial landline to E.S.	46.96	386.60
AT&T channel conditioning	56.00	65.00
TOTAL PAYOUTS	389.96	736.60
IRC rate	458.50	458.50
Operating margin	70.54	(278.10)

No explanation is given for the discontinuance of these offerings to the IRCs and, as far as we are aware, authority has neither been requested nor received for such discontinuance.

Section 214(a) of the Act requires that before effecting a "discontinuance, reduction, or impairment of service", a carrier must first apply for and obtain a certificate from the Commission. This statutory provision, moreover, has been expressly held by the Courts to apply to facts similar to those involved in the instant case. Thus, in a leading case on the subject, it has been stated:

> "The burden is cast upon the carrier which wishes to discontinue a service to make proper application for a certificate.
> The Telephone Company has not applied for such a certificate. It has, instead, simply announced its intentions in a filed tariff which tells other connecting carriers' what it is offering in the way of facilities."*

The Court went on to note that the term "community" as used in Section 214 could apply to "an economic 'community' of users, such as international record carriers."** The Court stated:

> "The important concept of 'community' in Section 214 I take to be the public interest. In the issue here raised, the inconvenience to the customers of the international record carriers is at least as great as to the carriers themselves."***

We submit that Bell may not discontinue the offering of any of the present services to the IRCs in the manner set forth above without first seeking and obtaining authority under Section 214 upon legally valid grounds not present herein. Since this has not been done in this instance, the instant tariff is properly subject to rejection.

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* *ITT World Communications Inc. et al. v. New York Telephone Co.*, 381 F. Supp. 113, 120 (S.D.N.Y. 1974).

** *Id.* at 121.

*** *Ibid.*

In No Event Should This Tariff Become Effective Until The Commission Rules on The Reconsideration Requests Before It

The Commission has before it petitions for reconsideration which point out serious legal and factual defects in the Commission's Final Decision and Order in Docket No. 20452. Since that decision constitutes the underlying authority for any tariff filing, it would be improper to permit this tariff to become effective in advance of a ruling on the pending pleadings.*

We also wish to point out several related actions taken by Bell System companies in purported reliance on Docket No. 20452. By letter dated May 27, 1977, the New York Telephone Company terminated effective immediately lease agreements with RCA Globcom covering facilities connecting our New York central operating office with our radio transmitting and receiving stations at Rocky Point and Riverhead, Long Island. By message dated May 27, AT&T terminated effective

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* Attention is directed to Section 555(b) of the Administrative Procedure Act which requires an agency to act "with due regard to the...necessity of the parties" and "within a reasonable time."

June 27, 1977 the contract covering provision of local television channels between its New York operating center at 32 Avenue of the Americas and RCA Globcom's New York operating office at 60 Broad Street.* (A similar termination notice was received for television channels provided in San Francisco.) It should be noted that, unlike domestic satellite carriers, international record carriers by Commission order are only eligible to provide television service for 13 weeks a year on a rotational basis. Acceptance of this approach, which would impose higher costs on the IRCs which are not also borne by AT&T, could in essence make it virtually impossible for the IRCs to continue to offer television transmission and reception service at current rates and place in jeopardy the present rotational concept.

Under the circumstances, we submit that the Commission should advise the Bell companies that in no case are they to effect a change in service or charge for service to the IRCs on any basis other than the preexisting contracts until the Commission decides both the questions raised by the pleadings addressed to the Final Decision and Order in Docket No. 20452 and such pleadings as may be filed in connection with Bell Tariff F.C.C. No. 4.

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* AT&T has also terminated, effective coincidental with the effective date of Bell Tariff F.C.C. No. 4, the "General Agreement For Leasing of Circuits" between our companies which was the primary document in issue in Docket No. 20452.

It should be noted in this connection that the Commission Order adopted May 26, 1977 denying RCA Globcom's stay motion was based in part on the fact that no injury would be suffered by the IRCs in the intervening period until the Commission acted on the reconsideration requests because the status quo would be maintained. Certainly, it would be improper to permit the implementation of actions to the detriment of the IRCs in reliance on the authority of Docket No. 20452 until the legal and factual questions are resolved in appropriate proceedings.

Conclusion

The Courts have recognized that, under the Communications Act, the Commission is required to reject unlawful tariffs. It has been stated:

> "We recognize, however, that an agency has the power and in some cases the duty to reject a tariff that is demonstrably unlawful on its face. Thus, an agency will reject a tariff that conflicts with a statute, agency regulation or order, or with a rate fixed in a contract sanctioned by statute; similarly, a tariff will be rejected if it is unlawful without prior agency approval, and approval has not been obtained. In such cases the refusal of an agency to reject a tariff may be reviewed by the courts."*

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* Associated Press v. FCC, 448 F. 2d 1095, 1103 (D.C. Cir. 1971).

Since Bell Tariff F.C.C. No. 4 has not been shown to be "just and reasonable", is discriminatory on its face and proposes to discontinue services now available to the IRCs without proper authority, it should be rejected as unlawful. The Commission should also order that the intrastate tariffs, now purporting to govern service furnished in California, Florida and New Jersey, be withdrawn.

Furthermore, in view of the patent defects in this tariff, we submit that no useful purpose would be served by conducting an investigation into its lawfulness. As has been stated by the courts, rejection is appropriate rather than to open a "futile docket".* This is especially true here where serious questions have been raised regarding the findings and procedures in Docket No. 20452 which is the sole support for replacing the existing intercarrier contracts with this tariff. Certainly, in the circumstances of this case, the Commission should conduct the required investigation first rather than placing the IRCs and their customers "under the gun" of filed tariffs which will go into effect before such investigation can likely be completed. We submit that the only way to preserve the status quo and protect the legitimate rights of the affected parties would be to reject this tariff.

Respectfully submitted,
RCA GLOBAL COMMUNICATIONS, INC.

s/Francis J. DeRosa

s/Charles M. Lehrhaupt

June 21, 1977

Its Attorneys
60 Broad Street
New York, New York 10004

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* Delta Air Lines v. C.A.B., 543 F. 2d 247, 264 (D.C. Cir. 1976), citing Municipal Light Boards v. F.P.C., 450 F. 2d 1341 (D.C. Cir. 1974) at 1346.

CERTIFICATE OF SERVICE

I, Phyllis M. Polay, hereby certify that on this 21st day of June, 1977, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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Phyllis M. Polay

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, LONG
LINES DEPARTMENT

Transmittal No. 12758

Proposed Revisions to Tariff
F.C.C. No. 266, Facilities for
Other Common Carriers

and

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, LONG
LINES DEPARTMENT, NEW JERSEY
BELL TELEPHONE COMPANY, PACIFIC
TELEPHONE AND TELEGRAPH COMPANY
and SOUTHER BELL TELEPHONE AND
TELEGRAPH COMPANY

Transmittal No. 5

Proposed Bell System Operating Companies
Tariff F.C.C. No. 4, Overseas Connecting
Facilities for Other Common Carriers.

To: Common Carrier Bureau

PETITION FOR REJECTION

ITT World Communications Inc. (ITT Worldcom) hereby submits its Petition for Rejection of the above-captioned matters. In support of this Petition, ITT Worldcom respectfully states:

In purported compliance with the Commission's *Final Decision and Order* in Docket No. 20452 (*Final Decision*)[1], American Telephone and Telegraph Company (AT&T) has filed proposed revisions to its Tariff F.C.C. No. 26[illegible] which allegedly "deletes the offering of facilities between specified points where the point is an overseas cable station or a satellite earth station utilized by the Telephone Company in the provision of its authorized overseas services."[2] Moreover, AT&T, in addition to certain Bell System Operating Companies[3], concurrently filed a new tariff offering entitled, Bell System Operating Companies Tariff F.C.C. No. 4, "Overseas Connecting Facilities for Other Common Carriers". This tariff seeks to offer the facilities deleted from the proposed revisions to Tariff F.C.C. No. 266 to carriers which are authorized to provide services to overseas points, namely, international record carriers (IRCs). In short, the proposed revisions offer intercity facilities whereas the new tariff offers entrance facilities from the IRCs' gateways to the overseas cablehead, earth station or radio site.

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[1] FCC 77-179, released March 23, 1977.

[2] Transmittal No. 12758, p. 1, dated May 27, 1977.

[3] The issuing carriers other than AT&T are New Jersey Bell Telephone Company, Pacific Telephone and Telegraph Company and Southern Bell Telephone and Telegraph Company.

Summary of Arguments

1. ITT Worldcom should be permitted to purchase, in accordance with previous Commission policies, indefeasible rights of use (IRU) in needed facilities for the provision of its services;

2. AT&T's proposed tariff revisions and its new proposed tariff should be rejected because of *per se* violations of the Commission's *Final Decision* and Rules and Regulations in that,

   (a) AT&T, which has admitted that the provision of facilities to the IRCs is not identical to the provision of facilities to Other Common Carriers (OCCs), has failed to submit the appropriate cost justification required by Section 61.38 of the Commission's Rules and Regulations; and,

   (b) The proposed tariff filings conflict with Sections 61.74 and 61.55 of the Commission's Rules and Regulations because of improper cross-referencing of rates and charges to different tariffs which result in undue complication;

3. Acceptance of the instant tariff proposals prior to a ruling on ITT Worldcom's Petition for Reconsideration of the *Final Decision* would constitute a denial of procedural due process.[4]

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[4] ITT Worldcom, Petition for Reconsideration, dated April 25, 1977.

Factual Background

The Commission's Final Decision concluded that the contracts between AT&T and the IRCs for the provision of entrance and intercity facilities were inequitable and discriminatory. In support of this conclusion, the Commission noted that the provision of facilities by AT&T to the Specialized Common Carriers (SCCs) and the Domestic Satellite Common Carriers (DSCCs) is pursuant to tariff and contains different terms and conditions than the AT&T-IRC contracts. Accordingly, it was ordered that AT&T must provide intercity and entrance facilities to the IRCs on the same terms and conditions as it offers facilities to the SCCs and the DSCCs.5/

5/ The Commission also stated that the contractual arrangements between AT&T and the IRCs may be discriminatory with regard to the provision of MARISAT services by COMSAT General and ordered that the provision of facilities for this service be provided on the same terms and conditions to the IRCs and COMSAT General.

Although the Commission did not specify the manner in which this discriminatory treatment was to be rectified, it strongly suggested that "the most desirable means to insure that facilities of the kind in issue herein are provided to all carriers on reasonable and non-discriminatory terms is by the filing of tariff schedules."[6] The Commission even went so far as to state that if facilities are offered by tariff to the IRCs, SCCs and DSCCs on identical terms and conditions that it would waive the requirements of Section 61.38 of its Rules and Regulations "until such time as AT&T files full justification for the various OCC facility offerings".[7] However, the Commission specifically reserved the right to accept, reject, suspend or investigate "whatever may be filed" and absent "identical" terms and conditions, AT&T would be required to comply with Part 63 of the Commission's Rules and Regulations.[8]

Subsequently, ITT Worldcom, in addition to Western Union International, Inc. (WUI) and RCA Global Communications, Inc. (RCA), filed a Petition for Reconsideration wherein it was demonstrated that the Commission's Final Decision raised serious questions of a factual nature which will have a substantial impact upon the public interest and United States carriers' relations with foreign administrations. AT&T also recognized these questions and filed a Petition for Extension of Time in which to comply with the *Final Decision* because of the complexities involved in attempting to equate the different facilities to the different carriers.[9] Additionally, AT&T filed a Petition for Clarification of the *Final Decision* because "[c]ertain facilities are furnished to specific IRCs which, for varying reasons, are unlike any facilities furnished to SCC s and DSCCs."[10]

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[6] Final Decision, note 1 supra, at para. 17, p. 10.

[7] Id. at p. 10, n. 8. The Commission, however, held that within 30 days after the publication of its decision in the Federal Register, AT&T must file a letter giving a date certain for the submission of a full justification.

[8] Id.

At present, no action has been taken by the Commission on any of these pleadings except AT&T's Petition for Extension of Time until May 27, 1977 in which to comply with the *Final Decision*.[11]

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[9] AT&T, Petition for Extension of Time, dated April 13, 1977.

[10] AT&T, Petition for Clarification, para. 3, p. 2, dated April 25, 1977.

[11] Aside from the pleadings previously mentioned, WUI filed Comments dated April 21, 1977 in support of AT&T's Petition for Extension of Time, Reply Comments dated May 5, 1977 with respect to the petitions for reconsideration and a letter request dated May 20, 1977 for an extension of time within which AT&T was required to comply with the *Final Decision*. Moreover, ITT Worldcom and RCA on May 25, 1977 filed letters in support of this letter request. ITT Worldcom also filed Comments dated May 5, 1977 with regard to AT&T's Petition for Clarification and RCA filed a Request for Stay concurrently with its Petition for Reconsideration dated April 25, 1977. Other than denying the Request for Stay (*Order*, FCC 77-361, released June 9, 1977), the Commission has also not acted on any of these filings.

The Instant Proposals Should Be Rejected and ITT Worldcom Should Be Granted the Opportunity to Purchase IRU Interests in Facilities Utilized to Provide Regularly Authorized Services

ITT Worldcom submits that the instant proposals should be rejected and that it be accorded an opportunity to purchase IRUs in both entrance and intercity facilities as an extension of its IRU interests in overseas facilities for the provision of its regularly authorized services.

It is axiomatic that an ownership interest in communications facilities results in lower charges to the public than would be the case if carriers must acquire such facilities by lease or under tariff. In ruling on IRC applications for authority to acquire IRU interests in several submarine cable systems, the Commission concluded:

> ...that the acquisition on an indefeasible right of user basis is at present the most efficient and economical means by which the international telegraph carriers may acquire facilities in various submarine telephone cable systems, will eliminate the substantial rentals such carriers are currently paying for lease of the circuits, and thus reduce the costs of furnishing service to the public. 12/

12/ *Order*, FCC 64-41, released January 22, 1964 p. 3.

This concept was reaffirmed by the Commission in a Second Report and Order[13] concerning ownership and operation of earth stations when it stated:

> We find that the most logical and equitable formula is one under which ownership is reasonably related to use. Any major departure from this principle would, in essence, mean that a carrier ready, willing, and able to pay for facilities which it actually requires to handle traffic would be required to lease them from a second carrier. The sole function of the second carrier would be that of the investor in facilities on which such second carrier would realize a return at the expense of the first-carrier user. [14]

Similarly, in its Memorandum Opinion and Order in Docket No. 20201[15] the Commission, in addressing the subject of "appropriate access" to earth stations and paraphrasing the positions of WUI and ITT Worldcom, stated:

> ...The Commission has repeatedly determined that the carriers' revenue requirements are favorably lower when their services are rendered via owned rather than leased facilities...WUI and ITT are not seeking any subsidy, but rather an investment position in the relevant earth stations...[16]

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[13] 5 F.C.C. 2d 812 (1966).

[14] Id. at 818-819.

[15] 49 F.C.C. 2d 42 (1974).

[16] Id. at 48.

Continuing, the Commission later stated that "[u]pon consideration of the arguments made by the record carriers...we are inclined to the view that the record carriers should have access to the relevant earth stations...on the basis sought by WUI and ITT", that is, the purchase of IRUs.[17]

In short, the Commission has recognized and approved the acquisition of IRUs by the IRCs in both cable and satellite earth segment facilities for access to connecting circuitry in the provision of their regularly authorized services because they are the most efficient and economical means by which IRCs may acquire these facilities.

This established Commission policy should also be applicable to the acquisition of entrance and intercity facilities. ITT Worldcom does not offer domestic services but rather offers services between domestic and overseas points. In providing these services it employs both cable and satellite facilities. ITT Worldcom, on the basis of use, possesses IRU interests in cable circuits in recognition that this is the most efficient and economical means of acquiring these facilities. For example, if a subscriber o

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[17] *Id.* at 53. In recognition of this inclination, AT&T and GTE Satellite Corporation have agreed to sell the IRCs IRUs in the domestic satellite earth stations.

ITT Worldcom located in San Francisco requires a telex circuit to London, ITT Worldcom will acquire the necessary connecting or intercity facilities between San Francisco and New York. From New York ITT Worldcom must then obtain additional connecting or entrance facilities to the cablehead or earth station. In the case of a cablehead, ITT Worldcom will connect the entrance facility to its own cable circuitry in which it has an IRU interest which, in turn, is connected to the cablehead located in the United Kingdom. The intercity and entrance facilities, therefore, are natural and logical extensions of the overseas connecting facilities in which ITT Worldcom already possesses IRU interests. However, at the present time, all of the facilities acquired to the domestic cablehead have been by lease. AT&T now proposes to tariff these facilities. In other words, although ITT Worldcom can realize reduced revenue requirements on the cable segment of its service, it must incur increased revenue requirements on the domestic segment of its service.

It is difficult to imagine any rationale which would justify the payment of unnecessary additional costs which ITT Worldcom would avoid by acquisition of IRU interests in the facilities in question. If the Commission recognizes the public interest benefit of IRU interests in cable and earth station facilities, the same reasoning should hold equally true with regard to the domestic portions of international service offerings, namely, intercity and entrance facilities.

ITT Worldcom stands ready, willing and able to purchase IRU intersts in the facilities which it actually requires to handle traffic. ITT Worldcom submits that this question should be answered before the proposals which are the subject of this Petition are acted upon by the Commission.

AT&T's Proposals Conflict With The Commission's Final Decision

As stated earlier, the Final Decision stressed the Commission's desire for the submission of tariff schedules for purposes of providing facilities to carriers. In this connection, the Commission, in addition to specifically retaining its authority to reject, suspend or investigate any AT&T proposal, warned that if tariff proposals filed by AT&T did not result in identical "rates and conditions" for the IRCs, COMSAT General, SCCs and DSCCs, any differences had to be justified in accordance with Section 61.38 of its Rules and Regulations in addition to the submission of "other data". 18/ The Commission stated that if such terms and conditions were identical it would waive the requirements of Section 61.38 but AT&T would be required to submit a letter "within 30 days of the publication of this decision in the Federal Register" stating the date on which cost support material would be filed. 19/

However, the filings in Docket No. 20452 by ITT Worldcom and other carriers have amply demonstrated to the Commission that facilities presently provided to the IRCs are not, and cannot be, identical to the facilities pro-

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18/ See note 7 supra.

19/ Id.

vided to SCCs and DSCCs because of factors inherent in the nature of IRC services. These factors include arrangements such as cooperative testing and uniform standards of engineering, billing, facility restoration and transmission which have been mutually agreed to among the carriers. In the absence of IRU interests by the IRCs[20] which would permit these types of arrangements, the present contracts offer the most economical means of providing "...a rapid, efficient...world-wide wire and radio communications service..."[21] Conversely, alteration of these arrangements will be detrimental to the public interest and substantially disrupt the long-standing recommendations, agreements and understandings among all the nations of the world.

In any event, in the face of these historical and time-honored developments, the Commission has ordered and AT&T has filed terms and conditions for the provision of overseas facilities which attempt to treat IRCs, SCCs and DSCCs identically. Apparently feeling that the terms and conditions contained in the new proposed Tariff F.C.C. No. 4 are identical to the terms and conditions by which facilities are provided to OCCs, AT&T has not filed any cost support material as required by Section 61.38 or any "other data". Similarly, AT&T has not provided supportive data with regard to its proposed revisions to Tariff F.C.C. No. 266.

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[20] See supra, at pp. 7-11.

[21] 47 U.S.C. Section 1.

On the other hand, AT&T recognized the difficulty of identical treatment and referred to its Petition for Clarification which described "a number of unique situations which may not have been contemplated by the Commission".[22] These "unique situations" include the provision of telegraph grade circuits, high frequency interfaces, international restoration plans, part-time intercity television facilities and group, master-group and super-group channels, among others.[23] AT&T stated that "[p]ending such clarification, the material filed herein does not provide for these situations."[24] Therefore, the instant tariff filings by AT&T's

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22/ AT&T, Transmittal No. 5, p. 3, dated May 26, 1977.

23/ AT&T note 10 supra. See also, ITT Worldcom, note 4 supra; ITT Worldcom, Comments, dated May 5, 1977. AT&T's Transmittal No. 5 which accompanies its proposed Tariff F.C.C. No. 4, after noting the requirement for facilities coordination between AT&T, COMSAT and foreign administrations and the establishment of engineering standards in conformance with CCITT recommendations, stated:

> It has been in the public interest, therefore, to engineer these overseas facilities, in cooperation with COMSAT and Foreign Administrations [sic], so that voice grade connections to these facilities may be accomplished, as appropriate, at overseas cable stations, radio sites, satellite earth stations or at other than these locations. (AT&T, note 22 supra, p. 2).

AT&T then proceeded to describe a mode of testing which is unique to overseas facilities.

24/ Id. at p. 3.

admission do not contain any terms and conditions which address certain "unique situations" which "are unlike any facilities furnished to SCCs and DSCCs." In short, the instant proposals do not offer facilities to the IRCs on identical terms and conditions as offered to SCCs and DSCCs.

Accordingly, the Final Decision requires AT&T to submit supporting data in compliance with Section 61.38 of the Commission's Rules and Regulations.[25/] Absent this submission, the proposed revisions to Tariff F.C.C. No. 266 and the proposed Tariff F.C.C. No. 4 are in conflict with and violate the Commission's Final Decision. It is incumbent upon the Commission, therefore, to reject the instant tariff proposals.[26/]

[25/] The Commission's Order in Docket 20452, released June 9, 1977 (FCC 77-361) which denied RCA's Request for Stay of the Final Decision also recognized AT&T's reservations as expressed in its Petition for Clarification and stated:

> Since our Decision recognized that AT&T might provide the facilities in question to the IRCs on different terms and conditions with appropriate justification...it is possible that many of the concerns the IRCs state in the petitions could be alleviated in light of the tariff revisions and justification filed. (Id. at para. 3, p. 2)

Thus, the Commission concluded that AT&T must submit appropriate justification for the differences, among others, stated in its Petition for Clarification. As shown above, AT&T has not complied with this requirement and, therefore, it is not possible "that many of the concerns the IRCs state" can be alleviated.

[26/] In the Matter of United Video, Inc., 49 F.C.C. 2d 878 (1974); In the Matter of American Telephone and Telegraph Company, 46 F.C.C. 2d 13 (1974); Tariffs-Evidence, 40 F.C.C. 2d 149 (1973); Associated Press v. F.C.C., 448 F. 2d 1095 (D.C. Cir. 1971).

AT&T's Proposals Conflict With the Commission's Rules

Section 61.74 entitled, "References to other instruments", explicitly prohibits reference by one tariff to a different tariff or to any other document or instrument. An exception is provided only in the case of two tariffs where cross-referencing is permitted "for other matter applicable to such service" provided the reference is made by a carrier which is a party to both tariffs and provided that "such reference does not result in undue complication."[27]

AT&T's instant proposals are replete with cross-references which[28] do not fall within any exception. In proposed Tariff F.C.C. No. 4 the rates and charges for facilities, conditioning and special construction are all cross-referenced to AT&T Tariff F.C.C. No. 266 or to Bell System Operating Companys' "Facilities For Other Common Carriers" tariffs. Rates and charges, however, are not "other matter applicable to such service" as stated in Section 61.74.

Costs, and the rates and charges based on those costs, are basic to "the formulation of the essential regulatory judgments [the Commission] must make with respect to the lawfulness under the Communications Act of new or revised rates tendered by Common Carriers."[29] It is inconceivable that the term "other matter" would pertain to costs and, hence, rates and charges which are the crux of any tariff.[30/] Indeed, Section 61.55 of the Commission's Rules and Regulations states that a tariff shall not contain a "rule, regulation, exception, or condition...which in any way attempts to authorize the substitution for any rate named in the tariff of a rate named in any other tariff."[31/] AT&T has clearly violated this prohibition.

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[27] 47 CFR Section 61.74 (b).

[28] See e.g., Tariff F.C.C. No. 4, Section 41, 4.2 and 4.3, Original Page 17, Effective August 25, 1977.

[29] Tariffs-Evidence, 25 F.C.C. 2d 957, 965 (1970).

Moreover, the cross-referencing in question results in undue complication. For instance, AT&T's cross-references for facilities under Tariff F.C.C. No. 4 state that the rates and charges "are the same as those rates and charges specified for the same types of facilities in the American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C No. 266" or "Bell System Operating Company's 'Facilities

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[30/] The inappropriateness of this result is glaringly evident by the provision of group, master-group and super-group channel facilities to the IRCs by AT&T at an increased efficiency and lower cost than single-channel facilities. Yet, AT&T's proposals cross-reference its rates and charges to single-channel facilities.

[31/] 47 CFR Section 61.55(h).

For Other Common Carriers' tariff" depending upon where the terminal points are located. However, Tariff F.C.C. No. 266 states that "[t]he rates for facilities provided under this tariff, are the same as those listed in the American Telephone and Telegraph Company Tariff F.C.C. No. 260".[32] In short, an interested carrier must scrutinize the applicable provisions of three tariffs in addition to the applicable Bell System Operating Company tariff before finding the appropriate rate.

This is clearly the type of "undue complication" Section 61.74 was designed to prohibit. As stated in Section 61.55 of the Commission's Rules and Regulations entitled, "Composition of tariffs", tariffs shall contain, among other things, "[c]lear and explicit explanatory statements";[33] "[a] clear and definite statement of the general rules, regulations, exceptions, and conditions which govern the tariff"[34/] and "[a]n explicit statement of charges...all arranged in a single and systematic manner".[35/]

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[32] Tariff F.C.C. No. 266, Section 4.2.1, 5th Revised Page 21, Effective April 7, 1976. See also, id., Section 4.3, 3rd Revised Page 22, Effective May 15, 1975.

[33] 47 CFR Section 61.55 (f). (Original in italics).

The improper cross-referencing of rates or charges and the undue complication of AT&T's instant tariff proposals are _per se_ violations of the Commission's Rules and Regulations and, therefore, the proposals are unlawful on their face. Consequently, they should be rejected.[36/]

Moreover, and as the Commission is aware, AT&T must file rates for its interstate services in conformance with revised Full Distributed Cost (FDC) Method 7 using revised FDC Method 1 as a benchmark.[37/] Although AT&T was required to file this material by June 8, 1977, a Commission _Memorandum Opinion and Order_[38/] has authorized staggered filings during the period June 8, 1977 to August 8, 1977 for particular services, some of which are contained in either Tariff F.C.C. No. 266 or 260, or both. Moreover, AT&T's Tariff F.C.C. No. 266 is and has been subject to Commission inquiry in Docket No. 20814 and its recent revisions to this tariff[39/] are now part of that investigation.[40/] In light of this regulatory chaos regarding

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[34/] _Id_. at (g).

[35/] _Id_. at (h).

[36/] See note 26 _supra_, and cases cited therein.

[37/] Docket No. 18128, 61 F.C.C. 2d 587 (1976).

[38/] Docket No. 18128, FCC 44-332, released May 20, 1977.

[39/] AT&T, Transmittal No. 12716, dated March 23, 1977.

[40/] _Memorandum Opinion and Order_, Docket No. 20814, FCC 77-383, released June 13, 1977.

both the submission of a complete datum based on revised FDC Methods 1 and 7 and the current investigation concerning AT&T's Tariff F.C.C. No. 266, the instant tariff proposals should be rejected in order to give the IRCs an opportunity to assess the revenue-cost relationship of all of AT&T's services. It is essential, therefore, that AT&T file its FDC studies for all sixteen of its services before the instant filing can be properly evaluated.

Acceptance Of The Instant Tariff Proposals Prior To A Ruling On ITT Worldcom's Petition For Reconsideration Is A Denial Of Procedural Due Process

ITT Worldcom, in addition to WUI and RCA, timely filed a Petition for Reconsideration of the Commission's Final Decision. Although the Commission has neither granted nor denied this request, an acceptance of the instant tariff proposals would effectively render these Petitions moot. A clearer violation of elementary principles of fair play and procedural due process would be hard to imagine.

In enacting the Communications Act, Congress specifically provided for a statutory scheme whereby an aggrieved or adversely affected party can, as a matter of procedural right, request the Commission to reconsider its actions.[41] This legislative proviso is found in Section 405 of the Communications Act[42] which states, in part:

> The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate...[43]

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[41] See Black River Valley Broadcasts v. McNinch 101 F. 2d 235 (D.C. Cir. 1938), cert denied, 307 U.S. 623 (1939).

[42] 47 U.S.C. Section 405.

[43] Id. (Emphasis supplied). Cf. 47 CFR Section 1. 106 (j).

The Commission, therefore, faced with a petition for reconsideration, must, at the very least, enter an order denying or granting the petition with a concise statement of the reasons therefor. Stated differently, "the purpose of the law is defeated if the Commission declines to act upon such petitions when they are filed, or dismisses them without consideration".[44/]

The Petition for Reconsideration of ITT Worldcom requested the Commission to reconsider its conclusions as set forth in the Final Decision, recognize the validity of the AT&T-IRC contracts for entrance and intercity facilities in the provision of the IRCs regularly authorized services and permit ITT Worldcom to continue to acquire these international facilities pursuant to the existing contract between AT&T and ITT Worldcom. In support of this request, ITT Worldcom demonstrated that

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[44/] Southland Industries v. F.C.C., 99F. 2d 117, 122 (D.C. Cir. 1938). See also, note 41 supra, at 239. ITT Worldcom is not contending that a grant of a petition for rehearing is a matter of right rather, that it is entitled to receive a concise statement disposing of its Petition before the Commission takes any action on the subject tariff filings which would render such petition academic and undercut ITT Worldcom's chances of obtaining a stay pending judicial review of a Commission decision denying such Petition.

the terms and conditions under which the IRCs and COMSAT General must conduct MARISAT services are identical, that the IRCs, in comparision to the SCCs and the DSCCs, do not provide like services under like circumstances, that the public interest questions raised by a modification or abrogation of the present operating arrangements of the IRCs are substantial, that the effect of the Final Decision is to prescribe charges, classifications, regulations and practices without a full opportunity for hearing and, lastly, that the Commission's decision is unsupported by the record.

ITT Worldcom, therefore, in addition to RCA, WUI and AT&T, has raised substantial questions of fact which conflict with the basic premise upon which the Commission based its Final Decision, that is, the provision of like services under like circumstances by AT&T to the IRCs and OCCs. If the Commission permits AT&T's tariff proposals to become effective, ITT Worldcom's Petition for Reconsideration, however meritorious, will have been effectively denied without due process. If the Commission feels that ITT Worldcom's Petition for Reconsideration raises unresolved issues of fact -- e.g., whether service provided by the IRCs and OCCs is identical -- it should reject the subject tariff filings and conduct an expedited evidentiary hearing and investigation for the purpose of resolving these disputed factual issues.

Conclusion

Although AT&T's instant tariff proposals attempt to offer facilities to IRCs and OCCs on identical terms and conditions, the factual issue, among others, of whether these carriers provide like services under like circumstances is still unresolved. The Final Decision which held that the provision of facilities to the IRCs by contract and the provision of facilities to the OCCs by tariff represented discriminatory treatment, which by implication was unjust or unreasonable, is bottomed on an assumed answer to the unresolved factual question.

ITT Worldcom, WUI, RCA and AT&T have submitted various pleadings addressed to this question all of which support the contention that the IRCs obtain unique facilities which are indigenous to international communications. The Commission has not as yet ruled on these pleadings and the instant tariff filings, by AT&T's own admission, do not cover "unique situations which may not have contemplated by the Commission."

In view of the substantial unresolved questions of fact presented which go to the very foundation of the Final Decision, the instant tariff proposals are premature. They also, for the reasons above stated, are in conflict with and violate the Commission's Final Decision and Sections 61.38, 61.74 and 61.55 of the Commission's Rules and Regulations.

ITT Worldcom, therefore, requests that the subject tariff filings be rejected and the Commission immediately initiate an expedited hearing which should include as issues whether the facilities provided to IRCs, SCCs and DSCCs are for like services under like circumstances; whether any discrimination which may exist between the rates presently accorded the IRCs by contract and the rates accorded the SCCs and DSCCs are just and reasonable; whether the tariff provisions filed by AT&T are just and reasonable; and, whether AT&T should be required to accord the IRCs IRU interests in the facilities in question.

Respectfully submitted,

ITT WORLD COMMUNICATIONS INC.

By

Joseph I. Jacobs

Randall B. Lowe

Its Attorneys
67 Broad Street
New York, New York

Dated: June 21, 1977

CERTIFICATE OF SERVICE

I, Valerie Carrasco, hereby certify that on this 21st day of June, 1977 I mailed to each of the following persons, by United States mail, postage prepaid, a copy of the foregoing "Petition for Rejection" of ITT World Communications Inc.

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Valerie Carrasco

Valerie Carrasco

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of BELL SYSTEM OPERATING COMPANIES Proposed Tariff F.C.C. No. 4, Overseas Connecting Facilities For Other Common Carriers, and Proposed Revisions To Tariff F.C.C. No. 266, Facilities for Other Common Carriers. To: The Common Carrier Bureau	Transmittal No. 5 Transmittal No. 12758 Docket No. 20452

PETITION FOR REJECTION

Western Union International, Inc. (WUI) hereby requests that the above-captioned tariffs filed by American Telephone and Telegraph Company (AT&T) on behalf of the Bell System Operating Companies be rejected.

Introduction

1. This proposed tariff should be rejected as being prima facie unlawful pursuant to: (a) the prohibition against ex parte contacts in Home Box Office, Inc. v. F.C.C., Case No. 75-1280 (D.C. Cir. March 25, 1977); (b) the Commission's Memorandum Opinion and Order released May 7, 1975 instituting this docket, which classified same as a "restricted rule-making proceeding" and stated that the Commission's decision therein "will be based on matters submitted for or incorporated into

the record"; and (c) Sections 201(b) and 202(a) of the Communications Act of 1934, as amended.

2. At the outset, we stress that we are not intending to inpugn the motives of either the dedicated Commission Staff or of A.T.&T. by questioning the ex parte meetings between A.T.&T. and the Commission Staff.

Ex Parte Meetings

3. Unbeknownst to the IRCs and the general public, AT&T and the Commission Staff held at least four ex parte meetings during a two month period concerning the filing of the subject tariffs. Due to the fact that Commission personnel kept no written records of these meetings, the details furnished to WUI about the meetings are somewhat imprecise and vague, and we cannot be certain that other ex parte contacts did not occur. However, pursuant to WUI's request of June 10 made under the Freedom of Information Act, the Commission has supplied some information concerning these meetings by its letter of June 24, 1977.

4. Ex parte meetings between the Commission Staff and AT&T took place on March 24, 1977, March 31, 1977, April 20, 1977 and May 18, 1977. The time devoted to these meetings was in excess of 3 hours and 45 minutes. Staff participants in these meetings were officials of the Common Carrier Bureau, whom we believe filled key roles in this docket proceeding and in the A.T.&T. tariff filing to which we object. AT&T participants in these meetings were officials

of AT&T Long lines. The subject matter of these meetings were what this docket is all about -- tariffs covering tail circuit facilities which we oppose. Among the matters discussed were A.T.&T.'s solicitation of the Staff's advi[illegible] as to certain problems involved in the tariffs; AT&T's stating details of the proposed tariffs; and AT&T's seeking Staff guidance on its request for waiver of Section 61.38 and 61.74 of the Commission's Rules prior to the filing of a public request for waiver. This is not to say that all pre-tariff filing discussions between the Commission Staff and the carriers are prohibited. However, they are prohibited in the context and background of this Docket No. 20452.

5. It is of particular concern to us that the final disposition of the subject AT&T proposed tariffs may have been foreordained. As previously pointed out by WUI in its Petition for Reconsideration of April 22, 1977, this whole proceeding has unfortunately been imbued with a prejudgment against the IRCs position, that their facility contracts with AT&T should not be abrogated.* This prediliction appears to have been exacerbated as a result of the ex parte contacts with AT&T. The Staff that will play a role in deciding the legality of the AT&T tariffs has participated in at least four ex parte meetings with AT&T concerning these very tariffs. The IRCs do not know in detail what occurred in these meetings. Accordingly, there may now be

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*See WUI Petition for Reconsideration dated April 22, 1977, pp. 18-20.

two records in this case, one being the public record known to the IRCs and to a potential reviewing Court, and the other being the private record known only to the Commission and AT&T. As stated by the Court of Appeals:

> "Even the possibility that there is here one administrative record for the public and this court and another for the Commission and those 'in the know' is intolerable."*

6. This appearance of taint can only be expunged by a rejection of AT&T's tariffs. In Home Box Office, the Court ordered the Commission to hold an evidentiary hearing to determine the extent and effect of all ex parte pleas and approaches made to the Commission and its Staff. The Court declared:

> "Equally important is the inconsistency of secrecy with fundamental notions of fairness implicit in due process and with the ideal of reasoned decision making on the merits which undergirds all of our administrative law"**

7. The Commission's June 24 ex parte disclosure letter, in response to WUI's Freedom of Information request, does not remove the taint. The information and representations presented to the Staff by AT&T relating to its proposed tariff filing could not be refuted by the IRCs due to their exclusion from the ex parte meetings. Thus, AT&T has had the benefit of presenting its views in a non-adversarial atmosphere. That benefit cannot be expunged by any subsequent

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*Home Box Office, Inc. v. F.C.C., supra, p. 89.

**Id., p. 94.

actions of the IRCs and therefore these proceedings are irreversibly tainted. In addition, although three of the ex parte meetings occurred after the *Home Box Office* decision, the Staff did not follow the mandate set forth by the Court of Appeals:

> "If *ex parte* contacts nontheless occur, we think that any written document or a summary of any oral communication must be placed in the public file established for each rulemaking docket *immediately* after the communication is received so that interested parties may comment thereon."* (Emphasis Added)

8. Since A.T.&T. stands to gain up to $5 million** a year in additional revenues from WUI and the other IRCs by virtue of the subject tariffs, AT&T's ex parte contacts in this case are particularly detrimental to the legal rights of WUI, who *unsuccessfully* requested conferences, hearings, and oral arguments involving *all parties*:

> ¶"We trust that you will agree with our request to review this matter at the Bureau/industry meeting, rather than through a flood of advocacy pleadings which will unnecessarily burden both the Bureau and the industry." WUI Letter of June 19, 1974 to Common Carrier Bureau who had requested AT&T to file tariffs abrogating the existing contracts for our tail circuits.
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> ¶ITT in its Comments, dated June 23, 1975, requested an evidentiary hearing pursuant to Section 205(a) of the Communications Act.

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*Home Box Office, Inc. v. F.C.C., *supra*, p. 98.

**This sum might be substantially higher in view of the higher-level intrastate rates being imported into the subject foreign tariffs.

¶WUI in its Comments, dated July 8, 1975, asked for a joint industry-Commission conference to deal with issues raised by this proceeding.

¶WUI in its Petition for Reconsideration, dated April 22, 1977, requested both an evidentiary hearing and an oral argument; and reiterated this request in its Reply Comments, dated May 5, 1977. Both ITT and RCA also requested evidentiary hearings in their respective Petitions for Reconsideration of April 22, 1977.

9. The willingness of the Commission Staff to meet ex parte with AT&T must be contrasted with its failure to heed the IRCs repeated requests, as outlined above, for the institution of formal or informal fact-finding proceedings to deal with issues in this docket.

Restricted Rule Making

10. The decision in Home Box Office dealt with ex parte meetings in a non-restricted rule-making proceeding. However, in its Order of May 7, 1975, the Commission denominated this matter as restricted rule-making and further stated that the decision will be based on matter submitted for or incorporated into the record. Thus, the rationale of Home Box Office applies with even greater force to this proceeding.

11. Part 1, Subpart H, of the Commission's Rules sets forth the rules relating to ex parte presentations in restricted rule-making proceedings. Since this matter is still subject to reconsideration by the Commission, the

proceeding is still deemed restricted (Rule 1.1207). In such proceedings, the Chief of the Common Carrier Bureau and his Staff are deemed decision-making Commission personnel (Rule 1.1209). As such, said personnel are prohibited from entertaining ex parte presentations (Rule 1.1225). Further, if such a presentation is made, a written statement of the presentation must be forwarded to the Executive Director and thereafter placed in a public file (Rule 1.1234).

12. Clearly, the subject AT&T tariffs are in integral part of Docket No. 20452:

> "We will act on the merits of the pending Petitions for Reconsideration and Clarification in light of the tariff filings made by AT&T and any comments filed with respect thereto." Order of June 9, 1977, para. 3, FCC 77-361.

This docket remains in its sensitive restricted status, not only by virtue of the Commission's own rules, but also because of the strength and meritorious nature of the pending petitions. For example, WUI explained on paged 12 through 15 of its Petition for Reconsideration of April 22, 1977, how the Commission misunderstood the foreign entity U.S. transiting circuit issue as reflected in the discussion thereof in the Commission's Order of March 23, 1977 herein. Although, the Commission's letter of June 24, 1977 endeavored to reveal the essence of the meetings between the staff and AT&T, the summary is admittedly based on the individual recollections of the Staff. There were no written records concerning these meetings. Therefore, it is probable that the material of June 24, 1977 is incomplete as to what occurred at the four meetings disclosed therein, and in addition, conceivably may not set forth all meetings which occurred. It is possible that there might have been an ex parte discussion of the foreign entity U.S. transiting circuit issue sometime since the 1975 docketing of this case.

13. The failure of the Commission Staff and AT&T to follow the Commission's Rules for restricted rule-making proceedings calls into question the fairness of this proceeding. However innocent these ex parte meetings may have been, their mere existence taints this proceeding. Only rejection of AT&T's tariffs can remove the taint.

Section 201(b)

14. AT&T has failed to file any cost support data to justify the rates to be charged to the IRCs. Evidently such failure is based upon the Commission's waiver of this requirement in its Order. This waiver was the subject of one of the ex parte meetings between the Commission and AT&T. The Commission may not have foreseen the subtantial financial impact of the proposed tariffs upon the IRCs. Moreover, AT&T might not have full cost justification for these increased rates until December 1, 1978. Telecommunications Reports, May 31, 1977, page 19. Accordingly, the waiver

should be withdrawn and AT&T should be required to cost justify its increased charges on a fully allocated basis.

15. The Commission may not have foreseen the inclusion of inordinately higher intrastate rate levels in these tariffs.* The importation and cross-referencing of intrastate rates into a foreign tariff offering, without economic justification, is violative of Section 201(b) of the Act and Part 61 of the Commission's Rules.

16. It is well established that intrastate rates should not be applied to interstate or foreign facilities. In the recent case of State of California v. F.C.C., Case No. 75-2060 (D.C. Cir. June 20, 1977), the Court quoted with approval, the Commission's determination that: "[t]he key issue ... is the nature of the communications which pass through the facilities not the physical location of the lines." (p. 5) Since it is undisputed that the facilities at issue are solely for the provision of foreign communications, the applying of intrastate rates thereto is illegal.

Section 202(a)

17. The proposed tariff is discriminatory in violation of Section 202(a) of the Act. As noted above the tariff applies instrastate rates to facilities located wholly within a state although these facilities are used

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*for the magnitude of these intrastate rate increases superimposed upon foreign communications facilities, see pages 7-8 of RCA's Petition for Rejection, dated June 21, 1977.

exclusively for foreign communication. These charges are higher than comparable interstate AT&T Long Lines charges. However, under AT&T's F.C.C. Tariff No. 3, presently in effect, a customer who is provided a local loop facility under that tariff is charged the interstate rate (under AT&T Tariff No. 260) if his premises are outside the local exchange area even though the facility is located between two points in the same state. No justification is offered for this different treatment of identically situated facilities.

18. As indicated in our Petition for Reconsideration of April 22, 1977, AT&T is unlawfully discriminating against the IRCs by abrogating their lower contract rates while continuing to provide identical tail circuit transiting facilities to foreign telecommunications entities at lower contract rules.

Miscellaneous Considerations

19. On June 28, 1977, AT&T conducted a meeting on the new procedures required by AT&T Tariff F.C.C. No. 4. An AT&T representative conceded that said tariff contained some errors and omissions. As a result thereof, AT&T proposed to revise certain portions of the tariff and to request a waiver of the Commission's Rules so that the thirty day waiting period would not apply to these revisions. It is submitted that this fact alone is sufficient justification for rejection of the tariff.

20. In addition, the tariff, for the first time incorporates new concepts into the provision of overseas communications. For example, Section 2.1.4. of the proposed tariff provides that the facilities provided to the IRCs will only by available after provision has been made for the Telephone Company's exchange and message telecommunications services. Thus, it is possible that the IRCs will be denied sufficient access to cable and satellite stations, of which they are part owners, and consequently be unable to properly provide their authorized services. The inclusion of 2.1.4. in FCC Tariff 4 is particulary inappropriate in light of AT&T's recognition, in its transmittal letter that the facilities involved are unique since they are provided for overseas communications. One of the IRC services relegated to second class status by Section 2.1.4. is public message services to individuals, some of whom cannot even afford a telephone. The provision of these facilities to the IRCs should not be dependent on the domestic whims of the Bell System. International communicators within the U.S. cannot be relegated to second class status, nor can international comity be jeopardized.

Conclusion

21. Suspension and investigation of AT&T's tariffs is an inadequate remedy. The taint upon these tariffs resulting from the ex parte meetings cannot be removed by a

suspension and hearing, even accompanied by an accounting order. A suspension/hearing proceeding is akin to a ticking bomb whose explosion at the end of the suspension period, but prior to a Commission decision, is inevitable. Moreover, an accounting Order cannot protect us against business losses of the type illustrated by RCA on page 9 of its Petition for Rejection, dated June 21, 1977. If the RCA service-deficit illustration were transposed to the Mainland/Hawaii route where AT&T is a direct competitor of the IRCs, the inequity of AT&T's proposed tariffs becomes most glaring.

22. Rejection of AT&T's tariffs is the only remedy available to remove the taint of the ex parte meetings. If the Bureau were disposed to reject the tariffs and to recommend a Commission-instituted evidentiary hearing in this docket, with an initial decision to be issued by an Administrative Law Judge, the Commission would cure the violations of the law pertaining to ex parte meetings as set forth in Home Box Office and its own Rules.

WHEREFORE, WUI respectfully requests that the Commission reject AT&T's proposed tariffs.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: July 6, 1977

service-deficit illustration were transposed to the Mainland/ Hawaii route where AT&T is a direct competitor of the IRCs, the inequity of AT&T's proposed tariffs becomes most glaring.

22. Rejection of AT&T's tariffs is the only remedy available to remove the taint of the ex parte meetings. If the Bureau were disposed to reject the tariffs and to recommend a Commission-instituted evidentiary hearing in this docket, with an initial decision to be issued by an Administrative Law Judge, the Commission would cure the violations of the law pertaining to ex parte meetings as set forth in Home Box Office and its own Rules.

WHEREFORE, WUI respectfully requests that the Commission reject AT&T's proposed tariffs..

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
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Dated: July 6, 1977

CERTIFICATE OF SERVICE

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/s/ Diane A. DiNoia

July 6, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
BELL SYSTEM OPERATING COMPANIES)
)
Proposed Tariff F.C.C. No. 4,) Transmittal No. 5
Overseas Connecting Facilities)
for Other Common Carriers.)

TO: The Commission

PETITION FOR REJECTION

TRT Telecommunications Corporation (TRT) hereby petitions the Commission to reject proposed Tariff F.C.C. No. 4 of the Bell System Operating Companies issued May 27, 1977 under Transmittal No. 5 to become effective August 25, 1977. In support hereto, TRT submits that proposed Bell Tariff No. 4 should be rejected on the following grounds:

1. The proposed tariff is inconsistent with the Commission's Final Decision and Order in Docket No. 20452, 42 F.R. 16177, March 25, 1977, which required AT&T to eliminate any discrimination between its offerings of so-called "entrance facilities" to international record carriers (IRCs) and its provision of comparable facilities to other carriers. However, although the Commission contemplated that in any revised contract offering or tariff offering to the IRCs, AT&T would accord due recognition to the unique nature of the facilities provided to the IRCs, AT&T, by its proposed tariff, without any justification whatsoever, would apply the same rates for the unique facilities to the IRCs as are applicable for its private line services to the public.

2. AT&T has submitted no cost or other data, as required by Section 61.38 of the Commission's Rules and Regulations. Since AT&T has recognized that the facilities to the IRCs connecting the overseas cable stations, satellite earth stations and radio sites with the IRCs' gateway operating centers are provided in a unique manner requiring a separate tariff, there can be no justification for a waiver of AT&T's obligation to submit its discrete costs of providing these facilities with its tariff filing.

3. Bell's proposed tariff is unjustly discriminatory on its face, in violation of Section 202(a) of the Communications Act. As Bell has stated in its Transmittal, it is not required to terminate the facilities governed by its proposed Tariff on an individual voice-grade channel basis at the earth stations and cable stations. Rather, the IRC circuits are combined with AT&T's own circuits and transmitted directly overseas through the earth stations or cable stations on a broadband basis. Bell's proposed rates do not reflect any of the obvious savings in multiplexing and termination costs to it in providing "entrance facilities" in comparison to its cost in providing leased channels to the public or even with its cost in providing normal OCC facilities. On the contrary, Bell would charge the IRCs the same rates as it charges for its private line services to the public. Indeed, because the cable stations and earth stations are designed as low density points under AT&T's Tariff F.C.C. No. 260, in spite of the high volume of international traffic transmitted through those points, Bell proposes, without any justification whatsoever,

to require the IRCs to pay the rates which are applicable for its higher cost, private line services on low density routes.

4. The proposed charges to the IRCs have not been shown to be just and reasonable under Section 201(b) of the Act.

5. The rejection of Bell's proposed Tariff F.C.C. No. 4 is required by the public interest. By the proposed tariff, Bell would impose very substantial rate increases upon the IRCs, which may require increases in the rates to the public for international voice/record services, without any justification whatsoever. Indeed, although AT&T has stated that it plans, more than a year from now, to submit cost support for its OCC rates, generally it is not clear whether AT&T will ever, in the absence of Commission directive, reveal its cost for the unique facilities provided by it to the IRCs. Moreover, since there is no apparent justification for the imposition by Bell of the same rates for these facilities as it charges for its obviously higher cost private line services to the public, Bell's proposed charges to the IRCs are, prima facie, excessive and discriminatory.

We recognize that the Commission in Docket No. 20452 was concerned with the elimination of possible discriminations between Bell facility offerings to the IRCs and its offerings to the OCCs generally. However, the Commission surely did not intend for Bell to remove such possible preferential treatment by the imposition of charges that discriminate against the IRCs.

Accordingly, we submit that Bell Tariff No. 4 should be rejected and the contractual arrangements for "entrance facilities" should be continued in force until such time as Bell files applicable tariff revisions which are fully supported by relevant cost information. As the Commission is aware, the existing contract rates are applicable on a non-discriminatory basis to all competing IRCs and no other carriers compete with the IRCs for international services or have a need for the unique facilities to be provided under proposed Bell Tariff F.C.C. No. 4. Therefore, any discrimination between the IRCs and domestic OCCs which could result from the retention of the contract rates would be, at most, theoretical. The retention of the contract rates pending the submission of cost information, we submit, would be a much better course than to allow AT&T to implement its proposed patently unlawful rates without any justification.

WHEREFORE, TRT respectfully requests the Commission to reject Bell System Operating Companies Tariff F.C.C. No. 4.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

By: Roderick A. Mette

Roderick A. Mette
Vice President and Counsel

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Dated: July 6, 1977

CERTIFICATE OF SERVICE

I, VICKI E. BARTH, hereby certify that on this 6th day of July, 1977, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

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Vicki E. Barth
VICKI E. BARTH

*Hand Delivered

✓

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

Interconnection Facilities)
Provided to the International) Docket No. 20452
Record Carriers)

COMMENTS

RCA Global Communications, Inc. (RCA Globcom) hereby submits its comments in the above-captioned proceeding pursuant to the Commission's Memorandum Opinion and Order (the Order) released on May 7, 1975.

1. In the Order, the Commission has requested comments on two issues. The first issue is whether the Commission should order American Telephone and Telegraph Company (AT&T) to provide facilities to international record carriers (IRCs) between the IRCs' operating offices and their overseas facilities (earth stations and cable heads) (entrance facilities) and between and among their operating offices (e.g., New York and San Francisco) (inter-gateway facilities) pursuant to filed tariffs rather than pursuant to currently effective contracts. The second issue is whether it is in the public interest for the IRCs to continue their current practice of requiring their gateway city private line customers to obtain, direct from the local telephone company, facilities between the customer's premises and the IRC's operating office.

II. ENTRANCE FACILITIES AND FACILITIES BETWEEN GATEWAY CITIES

2. In the Order, the Commission noted that the entrance facilities and the inter-gateway city facilities are now provided by AT&T to the IRCs under contract rather than pursuant to tariff. The Commission further noted, however, that similar facilities supplied to domestic satellite common carriers are tariffed and that interconnection facilities provided to the IRCs within the gateway cities are also subject to tariff. In setting forth the basis for the inquiry into this issue, the Commission stated:

> It appears to us that there is no significant difference between the interconnection facilities provided to the IRCs and those provided under tariff to the specialized common carriers including domestic satellite common carriers. We therefore believe that a substantial question exists as to whether we should order AT&T to provide these facilities pursuant to filed tariffs rather than pursuant to contracts.[1]

3. As an initial matter, the Communications Act of 1934 as amended, (the Act) does not create a distinction between contracts and tariffs as means for one carrier to provide facilities to other carriers. Sections 201 through 211 of the Act and the rules promulgated thereunder set forth certain standards governing the contents of tariffs, the procedures under which tariffs are to be regulated by the Commission, and the criteria

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[1] Memorandum Opinion and Order adopted on April 23, 1975 in Docket No. 20452, Para. 1.

by which carriers are to provide services and facilities pursuant to tariffs. However, Sections 201(b) and 211 of the Act recognize both tariffs and carrier-to-carrier agreements as acceptable methods for one carrier to provide facilities to another carrier. Thus, as a matter of law, there is nothing in the Communications Act which treats contracts as a method less desirable than contracts for providing facilities to carriers.[2] On the contrary, the Act specifically recognizes carrier-to-carrier contracts and provides for their regulation.

4. Not only are contracts, by statute, as acceptable as tariffs, but also FCC policy has recognized and approved contracts as constituting an acceptable method for the provision of facilities to other carriers. For instance, in a proceeding concerning the supplementing of terrestrial connecting facilities in Hawaii for use with overseas circuits, the Commission specifically rejected the contention of an IRC that use of the facilities must be granted to that IRC only on an indefeasible right of user (IRU) basis. The Commission found, instead, that certain of its past decisions requiring IRUs were based on the particular circumstances involved. In the instant case, the Commission found that access to the facilities by lease would be suitable, thereby treating the method of a

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[2] See also Brief for Respondents in Opposition, pp. 10-11, American Telephone & Telegraph Co. v. FCC, U.S. No. 74-1229, October Term 1974.

carrier-to-carrier contract as being at least as acceptable as tariffs and IRUs.[3] In addition, in considering the establishment of entrance facilities from the INTELSTAT earth stations in Alaska and Pureto Rico, the Commission had received applications which contemplated access to the facilities either by contract or by the grant of indefeasible rights of user (IRUs). In both cases, the Commission found IRUs to be the preferable vehicle, but it is significant that the Commission limited its consideration to the devices applied for, contracts and IRUs. Apparently, tariffs were not so preferable as to impel the Commission even to consider them, let alone mandate their use.[4] Finally, the Commission initially preferred contracts as the method for AT&T to provide interconnection and local distribution facilities to the new specialized common carriers (SCCs),[5] and, in the Commission's policies adopted for domestic satellite common carriers (DSCCs), the Commission provided that contracts were one of several acceptable alternatives for the provision of interconnection and local distribution facilities to the new DSCCs.[6]

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[3] See Memorandum Opinion, Order and Authorization released on March 14, 1974 in File Nos. P-C-8338 and P-C-8338-A.

[4] See Communications Satellite Corporation, 23 FCC 2d 850 (1970); All America Cables and Radio, Inc., 15 FCC 2d 1 (1968).

[5] Specialized Common Carrier Services, 29 FCC 2d 870, 940 (1971).

[6] See e.g., Domestic Communications Satellite Facilities, 38 FCC 2d 665, 698 (1972); 34 FCC 2d 844, 856 (1972); 34 FCC 2d 1, [illegible] 23 FCC 2d 86, 96-97 (1970).

5. Thus, contracts are sanctioned in the Act and Commission policy has found contracts to be appropriate in particular circumstances in which both entrance facilities and local distribution facilities are involved. In addition, there is no apparent basis either to change this policy generally or to apply a different policy governing the particular method by which the IRCs obtain from AT&T entrance facilities and inter-gateway city facilities. From the beginning, the provision of these facilities pursuant to contract has worked smoothly and without controversy. The original contracts from the cable heads to the gateway cities were negotiated in the late 1940's. When the international satellite system began operations in 1965, the establishment and provision of entrance facilities by AT&T for the satellite earth stations were expeditiously concluded through carrier-to-carrier agreement. And when the matter of facilities for other common carriers (OCCs) was broadly and comprehensively treated in late 1974 and early 1975 in a series of intensive negotiations between AT&T and the OCCs, including the IRCs, the parties to those negotiations were able to agree that no change was needed in the arrangements by which AT&T provides entrance facilities and inter-gateway city facilities to the IRCs.[7]

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[7] See Paragraph 5 of the Settlement Agreement, attached to the Commission's Decision in Docket 20099 released May 7, 1975. (Offer of Facilities for Use by Other Common Carriers, FCC 75-450).

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6. As noted above, the Commission stated in the Order that the SCCs and the DSCCs obtain by tariff facilities from AT&T for interconnection and local distribution facilities and that "there is no significant difference" between those facilities obtained by the OCCs pursuant to tariff and the entrance and local distribution facilities obtained by the IRCs pursuant to contract. However, this does not form an adequate basis for replacing the IRC contracts with tariffs. First, there is no showing that the provision of interconnection facilities to the IRCs has been in any way unsatisfactory of itself. Second, while in some cases there may well be no significant difference between OCC facilities generally and IRC facilities, there is a significant difference between the circumstances under which the IRCs on the one hand and the DSCCs and SCCs on the other hand obtain their facilities.

7. The DSCCs and SCCs obtain facilities from AT&T in order to provide services which are in direct competition with services provided by AT&T. Further, as the Commission has found,[8] these competing OCCs are substantially dependent in the short run on AT&T for the interconnection and local distribution facilities which these OCCs require if they are to have the early capability to provide end-to-end service Thus, because of the competitive situation, the Commission apparently has found a need for a greater

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[8] See e.g., Domestic Communication Satellite Facilities, 34 FCC 2d, 844, 856 (1972); 34 FCC 2d 1, 66 (1972); 22 FCC 2d 86, 97 (1970); Specialized Common Carrier Services, 24 FCC 2d 318, 347 (1970).

degree of regulatory involvement and therefore has found in this particular case, independent justification for preferring tariffs as the method for one carrier to provide facilities to other carriers. Thus, the Commission's initial domestic satellite policy[9] favoring contracts was modified and AT&T was ordered to file tariffs for the provision of facilities to the DSCCs.[10] However, this modification of policy took place only after a full consideration of specific relevant factors that supported the conclusion that tariffs rather than contracts would achieve the Commission's objective that these facilities were to be made available to the satellite carriers under reasonable and non-discriminatory conditions.

8. With respect to IRC facilities, however, the circumstances are different. Most importantly, the IRCs do not compete with AT&T in providing their international communications services. Over the years, the IRCs and AT&T have worked out, within the framework of the currently effective contract arrangements, a cooperative relationship which has resulted in procedures and operating arrangements for the provision of through service in a most highly efficient manner. There is no reason to believe that this cooperative relationship will not continue, nor is there any reason to believe that this relationship could be improved upon or even equalled by resort to tariffs.

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[9] Set note 6 above.

[10] Memorandum Opinion, Order and Authorization adopted September 12, 1973 in File Nos. 25-DSE-P-71, etc., para. 19.

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9. In sum, there has been no showing that the provision of facilities for the IRCs by AT&T pursuant to contract has been, in practice, in any way objectionable to the IRCs nor has there been a showing that this arrangement has been in any way detrimental to the public interest. Further, the circumstances under which AT&T provides facilities to the IRCs pursuant to contract are substantially different from the circumstances under which the Commission has required AT&T to provide facilities to the OCCs pursuant to tariff. Finally, to require a shift from a contract to a tariff for the provision of facilities to the IRCs could disrupt the cooperative operational arrangements which have evolved under the currently effective agreements for the efficient provision of international record communications services. For these reasons, RCA Globcom believes that the Commission should not, as a matter of policy, order AT&T to provide interconnection facilities pursuant to tariffs rather than pursuant to contracts.

10. Even if the Commission were to find, however, that carrier-to-carrier contracts were in some way unacceptable, RCA Globcom believes that IRUs, rather than tariffs, are a preferable alternative. The Commission has approved IRUs as a policy matter under similar circumstances,[11] and this mechanism provides the

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[11] All America Cables and Radio, Inc. 15 FCC 2d 1, 14 (1968).

greater involvement of the IRC in assuring the proper provision and operation of the facilities.

II. CONNECTING FACILITIES WITHIN GATEWAY CITIES

11. The second issue which the Commission has raised in this proceeding concerns "whether it is in the public interest for the IRCs to require their gateway city private line customers to obtain, directly from the local telephone company, facilities between the customer's premises and the IRC's operating office."[12] As with the first issue, there is no apparent rationale which would justify a change from the arrangements currently used to provide service. The Commission does observe that:

> The IRCs offer telex service from overseas points directly to their customers' premises. Similarly, the domestic specialized and satellite common carriers offer their services directly to their customers' premises. However, the IRCs offer international private line...service only between overseas points and their gateway city operating offices.[13]

12. However, the mere fact that services in other circumstances are provided in a certain fashion does not therefore

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[12] Paragraph 2, Memorandum Opinion and Order released May 7, 1975 in Docket No. 20452. There is a possible question related to the appropriateness of proceeding herein by comments. The second issue in this proceeding can be looked on as a requirement by the Commission that a carrier provide a service; under Section 205 of the Act, the appropriate procedure would be an investigation and hearing.

[13] Paragraph 2, Memorandum Opinion and Order released May 7, 1975 in Docket No. 20452.

mean that all services should be provided in the same fashion absent some showing that the method of providing the present method is in some way objectionable or that a shift to the proposed method would produce some substantial identifiable advantage. RCA Globcom does not perceive any substantial advantage in shifting to the proposed new arrangement. In addition, there does not appear to have been any complaints about the arrangements used at present. On the contrary, the Commission has, in the very recent past, impliedly approved the practice of a customer obtaining local distribution facilities by requiring that AT&T and the Associated Bell System Companies file tariffs offering local distribution service directly to customers.[14] This requirement, by the Commission's own assertion,[15] is an effectuation of its stated policy in Specialized Common Carrier Services, 29 FCC 2d 870 (1971). Therefore, since no reason has been advanced why international private line services provided by the IRCs should be offered in any manner different from the manner now utilized, and since the manner now utilized has been specifically approved by the Commission for similar types of service, there is no justification for the Commission to order a change at this time.

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[14] Paragraphs 27 and 34 of Memorandum Opinion and Order released May 7, 1975 in FCC Docket No. 20099.

[15] Paragraph 27 of Memorandum Opinion and order released May 7, 1975 in FCC Docket No. 20099.

Respectfully submitted,

RCA GLOBCOM COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Denis J. Brion

Its Attorneys
2030 M Street, N.W.
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June 23, 1975

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CERTIFICATE OF SERVICE

I, Lili Holcombe, hereby certify that a copy of the foregoing COMMENTS was served this 23rd day of June, 1975 by United States mail, postage prepaid, to the following:

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EFM

7/2/75 - cc

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUN 24 1975
LAW DEPARTMENT

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

COMMENTS

ITT World Communications Inc. (ITT Worldcom) in response to the Commission's Memorandum Opinion and Order (Order) released May 7, 1975,[1] as modified by the Order of the Chief, Common Carrier Bureau released June 11, 1975,[2] hereby submits its comments in the above matter.

The Order requests comments from ITT Worldcom on two issues:

(1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts; and

(2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers.

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[1] FCC 75-451, Mimeo No. 34648.

[2] Mimeo No. 51382.

ISSUE 1

With respect to Issue 1, ITT Worldcom continues to adhere to the position stated in its letter to the Chief, Common Carrier Bureau dated June 25, 1974 that "requiring AT&T to file tariffs covering the captioned facilities would be seriously prejudicial to ITT Worldcom."

An affirmative answer to the question posed in Issue 1 would result in the Commission, on its own motion, regulating by tariff, the furnishing of certain highly specialized facilities, which have for the past seven years been furnished pursuant to a contract between American Telephone & Telegraph Company (AT&T) and ITT Worldcom. Both AT&T and ITT Worldcom have advised the Commission that they are well satisfied with this contractual arrangement.[3/] And ITT Worldcom is unaware that any third party has protested the existence of this contractual arrangement or any provision thereof. Indeed, the settlement agreement which the Commission accepted as the basis for the termination of FCC Docket No. 20099 specifically recognized the "unique needs of the international record

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[3/] Order, p. 1, para. 1. See also letter from T.W. Scandlyn, AT&T, to Chief, Common Carrier Bureau, dated June 26, 1974.

carriers between gateway cities and their entrance channels for cable heads and earth stations to those carriers' central offices."[4/] This agreement was signed by virtually all companies[5/] which might have any basis for complaint as to the existence of these contracts or their terms and conditions.

At a time when the President of the United States has announced his intention of meeting with the commissioners of the independent regulatory agencies (presumably including the Commission) to discuss steps "to curtail federal regulation of business"[6/] and has announced his intention to eliminate "'needless

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[4/] Memorandum Opinion And Order (FCC 75-450), released May 7, 1975, p. 11.

[5/] This agreement was signed by American Telephone and Telegraph Company, The Associated Bell System Companies, American Satellite Corporation, Data Transmission Company, ITT World Communications Inc., MCI Telecommunications Corporation, Interdata Communications, Inc., MCI-New York West, Inc., Microwave Communications, Inc., N-Triple-C Inc., RCA Global Communications, Inc., Southern Pacific Communications Company, Transportation Microwave Corporation, The Western Union Telegraph Company, Western Tele-Communications Inc. and Western Union International, Inc.

[6/] The New York Times, June 18, 1975 ed., p. 38, col. 1.

paper work'"[7], the concept of requiring additional and totally unnecessary tariff filings, and presumably the cost justification required by Section 61.38 of the Commission's Rules and Regulations, seems totally counter-productive.

There is no question that the interconnection facilities furnished to the international record carriers are properly the subject of federal jurisdiction. Consequently, the issue of whether federal or state jurisdiction applies to these facilities, which was a basic consideration underlying the Commission's decision in Bell System Tariff Offerings (Docket No. 19896)[8], is not present. Moreover, the international record carriers do not compete directly with AT&T.[9] Therefore, there is little danger that AT&T will furnish these facilities in a manner designed to further its competitive position *vis-a-vis* another carrier, thereby possibly necessitating the additional control which having these facilities furnished pursuant to tariff might give the Commission.

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[7] *The New York Times*, June 18, 1975 ed., p. 38, col. 1.

[8] 46 F.C.C. 2d 413 (1974).

[9] Except to a limited extent in the provision of service between the U.S. mainland and Hawaii.

Certainly, the Communications Act of 1934, as amended, (Act) makes it apparent that Congress intended that some types of carrier-to-carrier relationships would be governed by contract rather than tariff. Section 211(a) of the Act requires the filing of "contracts, agreements or arrangements with other carriers". The Commission itself stated, last April, with respect to such contracts that:

> "...it is reasonable to conclude that the provision which requires the contracts to be filed confers upon the Commission the authority to determine whether the terms and conditions thereof are consistent with the provisions of the Act." 10/

Since the Commission has the power to determine whether the terms and conditions of contracts which now exist between AT&T and the international record carriers, with respect to the subject interconnection facilities, are "consistent with the...Act", and the contracts themselves, having been jointly negotiated by the IRC's, are identical, 11/ and no international record carrier is placed in a more favorable position that its competitors, ITT Worldcom fails to appreciate why the subject interconnection facilities should be furnished pursuant to tariff rather than contract. The

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10/ 46 F.C.C. 2d 413 (1974).

11/ ITT Worldcom believes that with respect to future changes in these contracts, it is preferable if they are the subject of negotiated contract amendments rather than tariff revisions which can be unilaterally filed by AT&T, and only opposed by the use of the Commission's processes.

only reason for this advanced by the Commission is the purely conclusionary statement that "there is no signficant difference between the interconnection facilities provided by the IRC's and those provided by tariff to the specialized carriers including domestic satellite carriers".[12] Even this conclusionary statement is erroneous with respect to the great bulk of the facilities provided pursuant to these agreements.[13]

Most of the facilities provided to ITT Worldcom and the other IRC's pursuant to the contracts in question are facilities which run from the cable head points to ITT Worldcom's operating center in New York. These are nothing more or less than U.S. extensions of these oversea cables. They are facilities which are dedicated to the extension of the oversea cable circuitry and, for that reason readily distinguishable from the facilities provided to specialized common carriers under the various O.C.C. tariffs. At the time the agreement between AT&T and ITT Worldcom was entered into,

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[12] Order, p. 1.

[13] It is probably accurate with respect to some of the circuits between ITT Worldcom's operating centers in New York and its operating centers in other "gateway" cities. However, this seems immaterial since such facilities are now being provided by Western Union and various specialized common carriers and domestic satellite common carriers and at rates below those charged by AT&T to ITT Worldcom under the contract.

(May 3, 1968), ITT Worldcom believed that these facilities should be subject to the same type of IRU arrangement as the cables they were connected to. AT&T was opposed to the introduction of the IRU concept with respect to domestic facilities and offered to provide these facilities to ITT Worldcom on a cost basis generally comparable to that which ITT Worldcom would have incurred if it had acquired IRU interests in these facilities.

ITT Worldcom is frankly concerned that if the Commission orders AT&T to provide these facilities pursuant to tariff rather than pursuant to the present contract, which is acceptable to both parties, that the tariff rates specified by AT&T would be higher than the rates now provided by contract. Moreover, since withdrawal of its request for IRU interests in the subject facilities was given to AT&T as a consideration for the contract in question, it would be manifestly inequitable for the Commission, by administrative fiat, to change the position of the parties to this agreement at this late date in the absence of any overriding public interest reason for doing so.

ITT Worldcom believes that action by the Commission mandating abolition of the existing AT&T/ITT Worldcom contract with respect to the subject facilities could not properly be taken without according ITT Worldcom a "full opportunity for hearing" as required by Section 205(a) of the Act. In that event, ITT Worldcom requests that its right to acquire an IRU interest[14/] in the subject interconnection facilities be considered as an issue in that proceeding.

ISSUE 2

ITT Worldcom is strongly opposed to the suggestion that it be required to offer private line service "directly to the premises of...[its] gateway city customer." At the present time ITT Worldcom orders such facilities on behalf of its private line customers between their premises and ITT Worldcom's various "gateway" operating centers from Bell System Operating Companies. The result of this practice is that ITT Worldcom's private line customers pay exactly the charge for these interconnection facilities that is specified in the appropriate Bell System tariff. If ITT Worldcom were obliged to provide service directly to its customers' premises, it would be obliged to amend its present tariff to establish some type of average rate

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[14/] C.f. GTE Satellite Corp. 49 F.C.C. 2d 42, 55 (1974).

for these facilities.[15/] This would result in some of ITT Worldcom's private line customers paying more for these interconnection facilities than they presently pay and others less than they presently pay, since ITT Worldcom would in effect be obliged to make a fixed charge for a variable facility. Moreover, furnishing of these facilities by ITT Worldcom would, of necessity, require ITT Worldcom to include in the calculation of its "costs" general administrative and overhead charges which its customers do not presently bear. Additionally, ITT Worldcom would be required to pay large and totally unnecessary sums to the Commission in the form of tariff page filing fees, since ITT Worldcom would be required to revise its tariff constantly so that it coincided with the tariff of the Bell operating company from which ITT Worldcom acquired these facilities. There would be no added convenience to ITT Worldcom's customers in the arrangement suggested by Issue 2 since ITT Worldcom's customers normally request ITT Worldcom to obtain interconnection facilities on their behalf from Bell Operating Companies at the time they order overseas facilities from ITT Worldcom.

[15/] Section 61.74 of the Commission's Rules and Regulations would prevent a cross-reference to the appropriate section of a Bell System Company tariff with respect to these charges.

CONCLUSION

For the reasons above stated, ITT Worldcom requests the Commission to permit it to continue to acquire the subject interconnection facilities pursuant to the existing contract between AT&T and ITT Worldcom. ITT Worldcom also urges the Commission not to require international record carriers to provide private line facilities directly to its customer's premises, instead of ordering these facilities on its customer's behalf from the appropriate Bell system operating company.

Respectfully submitted,

ITT World Communications Inc.

By

Joseph [illegible]. Jacobs

Its Attorney
67 Broad Street
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Dated: June 23, 1975

CERTIFICATE OF SERVICE

I, Kathleen E. Smith, certify that I have this 23rd day of June, 1975 sent a copy of the foregoing "Comments" by United States mail, first class postage prepaid, to the following:

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Kathleen E. Smith

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUN 2, 1975
LAW DEPARTMENT

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

COMMENTS OF
TRT TELECOMMUNICATIONS CORPORATION

TRT Telecommunications Corporation (TRT) hereby respectfully submits its comments on the two issues designated by the Commission's Memorandum Opinion and Order, released May 7, 1975 (FCC 75-451).

> (1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts;

The intercity facilities between the gateway city operating centers of the international record carriers (IRC's), on the one hand, and the cable heads and earth stations, on the other hand, have traditionally been provided pursuant to contractual arrangements between AT&T and the IRC's. Such contractual arrangements over the years have been satisfactory to AT&T and the IRC's and have resulted in the provision of reliable and flexible facilities for international record communications services. Moreover, since inter-carrier contracts are specifically recognized in the Communications Act and their validity has been acknowledged by the Commission, there can be no question of the appropriateness of such agreements between AT&T and the IRC's as a legally permissible method of assuring adequate facilities for the provision of international services to the public.

The Commission now appears to question whether these beneficial contractual arrangements should continue, principally because AT&T supplies apparently similar "entrance" facilities to domestic satellite common carriers under tariff rather than contract. However, we submit that such "entrance" facilities are provided to domestic satellite carriers under significantly different circumstances.

The domestic satellite carriers provide domestic specialized services in direct competition with AT&T. The Commission therefore determined that it should require AT&T to provide "entrance" facilities to these carriers under tariff to assure that adequate facilities would be provided by AT&T and that AT&T would not discriminate to the advantage of its own services or among its competitors. On the other hand, with a few minor exceptions, AT&T does not compete with the IRC's. In the many years that the contractual arrangements between AT&T and the IRC's have been in existence, there have been no instances where AT&T has discriminated among the IRC's. Thus, in the case of the AT&T/IRC's facility leases, there is no need for the Commission to require the extra assurance against discrimination that would be provided by a tariff offering.

Moreover, the facilities provided under these contractual arrangements are extensions of overseas cable and earth station facilities which are owned jointly by AT&T and the IRC's. Since the use of the overseas facilities are regulated under contract, there would appear to be no reason to require a tariff offering regulating the use of the domestic extensions of such overseas facilities.

> (2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers.

In response to this issue, at the outset it should be noted that the IRC's do not own any local distribution facilities in the gateway cities and there has been no suggestion that the IRC's should construct duplicative local distribution facilities for the provision of international services. Thus, whether or not local channels for International Leased Channel Service are tariffed by the IRC's, such channels will have to be acquired from the local telephone companies in the gateway cities or from The Western Union Telegraph Company (Western Union).

The Commission apparently questions whether the IRC's should be required to tariff the local gateway city channels connecting to international leased channels provided by the IRC's because local channels are tariffed by domestic specialized carriers and because the IRC's provide telex as a through service to their gateway city subscribers.

These situations are distinguishable, however. The specialized carriers are required to tariff their offerings as through services in order to compete with the domestic specialized service offerings of AT&T and Western Union. There is no similar competitive requirement for International Leased Channel Service. International Leased Channel Service has traditionally been tariffed as an end-on-end service rather than as a joint through service.

This allows each of the carriers providing service to the customer, i.e., the U.S. domestic carrier, the U.S. international carrier and the foreign carriers, to set its own rates in accordance with its revenue requirements. This structure has proven to be the most practical for International Leased Channel Service in light of its characteristics. Thus, in International Leased Channel Service, the customer, for fixed monthly charges, is provided with the use of dedicated facilities between the United States and a foreign point.

In International Telex Service, on the other hand, dedicated international facilities are not provided for the customer's use. Rather, the customer on an occasional or demand basis is furnished with a temporary connection to any of the stations on the telex networks of the IRC's foreign correspondents. As a practical matter, International Telex Service must be tariffed as a through service. Accordingly, such through tariffing of International Telex Service provides no basis for requiring the through tariffing of the dissimilar International Leased Channel Service.

WHEREFORE, TRT respectfully submits that the Commission should not require the IRC's to obtain entrance and intercity facilities from AT&T pursuant to tariff rather than contracts and the Commission should not require the IRC's to offer international private line service directly to the premises of the carriers' gateway city customers.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

Roderick A Mette
Roderick A. Mette
Its Attorney

June 23, 1975

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June 23, 1975

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LAW DEPARTMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers.

COMMENTS OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby submits its comments in response to the Commission's Memorandum Opinion and Order (the "Order") released May 7, 1975 in the above-captioned proceeding.

1. The Commission's Order requested comments from the international record carriers (IRCs) and the American Telephone and Telegraph Company (AT&T) regarding two aspects of the manner in which AT&T provides certain interconnection facilities to the IRCs for use in the provision of their international record services. These two aspects of AT&T/IRC interconnection may be briefly summarized as follows:

(i) the manner in which AT&T provides certain facilities to the IRCs between the IRCs' operating centers and their overseas facilities (earth stations/cable heads) and between and among their operating offices;

(ii) the manner in which AT&T provides certain gateway loop facilities directly to the IRCs international private line customers to interconnect such customers' premises to the IRCs operating centers.

2. With respect to the foregoing classifications of facilities the Commission has asked for opinions on the following specific issues:

> "(1) Whether the Commission should require the international record carriers to obtain entrance (both from cable heads and earth stations) and intercity facilities from AT&T pursuant to tariffs rather than contracts; and
>
> (2) Whether the Commission should require the international record carriers to offer international private line service directly to the premises of the carriers' gateway city customers." (Order, para. 3).

3. In summary, WUI submits that the public interest and convenience has been, and will continue to be, best served by retention of the two distinct long-standing industry practices that are the subject of the Commission's inquiry in this proceeding. Because of the diverse nature of the facilities involved in each issue of this inquiry, as well as the distinct and unrelated considerations related thereto, WUI will address its comements separatly as to each issue.

The Public Interest Is Best Served By Continuation Of the Existing AT&T/IRC Contracts For Entrance and Intercity Facilities.

4. The Commission's Order notes that entrance and intercity facilities are provided to the IRCs pursuant to contract while "similar facilities provided to domestic satellite common carriers...are tariffed".* Additionally,

"interconnection facilities provided to the IRCs by AT&T within the gateway cities are also subject to tariff".* Citing these distinctions, the Commission goes on to state that since it appears that "no significant difference"** exists in the several facilities, AT&T should be ordered to terminate its contracts with the IRCs and provide such facilities via tariff.

5. Provision of facilities by one carrier to another pursuant to contract is a long accepted practice. Section 211(a) of the Communications Act of 1934, as amended, (the "Act") specifically requires that every carrier subject to the Act "file with the Commission copies of all contracts...in relation to any traffic affected by the provisions of this Act to which it may be a party".*** The WUI/AT&T contract, dated May 9, 1968, has been so duly filed. Further, Section 203(c) of the Act requires every carrier to file with the Commission its tariffs governing all jurisdictional communications services "unless otherwise provided by or under the authority of this Act.****

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* Order, para. 1.

** Id.

*** U.S.C. 47 §211(a).

**** U.S.C. 47 §203(c) (emphasis added).

6. Clearly, therefore, there exists a careful statutory scheme whereby carriers may elect, pursuant to the interrelated sections of the Act above quoted, to provide services to each other in one of two ways: (a) by a _tariff_ pursuant to Section 203, governing services to the public, and (b) by _contract_ pursuant to Section 211. The Commission in the instant proceeding appears to be attempting to dictate to the contracting carriers the manner in which the subject service is to be provided, thereby eliminating that very choice granted to the carriers under Sections 203 and 211 of the Act.

7. The action which the Commission apparently seeks to take in the instant proceeding is an abrogation of WUI's contract rights. The Supreme Court has held that the abrogation of such private contracts may be undertaken by an administrative agency only where such action can be clearly demonstrated to serve the public interest.* Nor may the contract be abrogated by one of the parties merely by the filing of a tariff covering the services in question.*

8. The Commission's Order is utterly devoid of any public interest considerations favoring the replacement

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* _FPC v. Sierra Pacific Power Co._, 350 U.S. 348 (1956).

** _United Gas Pipe Line Co. v. Mobile Gas Serv. Corp._, 350 U.S. 332 (1956).

of the existing IRC/AT&T contracts for entrance and intercity facilities with a tariff. To the contrary, the following considerations clearly establish that abrogation of the existing contracts will not serve the public interest:

(a) In the international record communications industry, the connecting landline circuitry obtained pursuant to the contracts in question is merely ancillary to the international cable and satellite paths. As will be further developed hereinbelow, the existing facilities contracts are arrangements negotiated in lieu of granting to the IRCs indefeasible right of use (IRU) interests in the subject facilities -- facilities which are a mere extension of, in some cases, international cables in which the IRCs own such IRUs. Accordingly, the subject contracts are an inherent part of the long-standing submarine cable and satellite earth station consortia of the IRCs and AT&T, totally distinct from the domestic telecommunications industry.* It is only in the latter industry, with the advent of new competition for AT&T, from domestic satellite and specialized common carriers that the Commission has heretofore taken exception to the long-standing practice whereby contractual relationships govern the provision of facilities by one common carrier to another. The particular public interest considerations often cited by the Commission for its desire to replace such intercarrier contracts with tariffs in the domestic communications industry -- that is, the finding that tariffs would more likely assure AT&T's emerging competitors with access, on non-discriminatory terms and conditions, to the essential facilities of AT&T -- are not present in the case of the IRCs, whose industry (with minimal exception) does not compete with AT&T, and who have developed over the years a mutually satisfactory working relationship with that carrier.

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*In fact, the IRC/AT&T contracts at issue here resulted in the voluntary withdrawal, for the time being, of the IRCs' demand for indefeasible right of use interests in the subject facilities. At the time of execution of its contract with AT&T, WUI specifically noted such contract was without prejudice to WUI's right to later reassert its IRU demands. (Letter of Robert E. Conn, then Vice President, to Ben F. Waple, December 2, 1968). WUI hereinbelow does, in fact, reassert its right to IRUs in the facilities here at issue.

(b) The abrogation by the Commission of the IRC/AT&T contracts may have serious repercussions in the delicate relationships between the U.S. communications industry and foreign telecommunications entities. As previously noted by WUI,* its own facilities contract with AT&T relates specifically to facilities provided to such foreign entities (¶3(d), for example). In addition, any abrogation of WUI's contract might impact upon the foreign entities through operation of the several TAT cable construction agreements (¶5(a)(b), TAT-6 Agreement, May 2, 1973, for example).

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*Letter of Robert E. Conn, Executive Vice President, to Walter R. Hinchman, June 19, 1974.

(c) To the extent that the present mutually satisfactory* IRC/AT&T contracts are replaced by tariffs, such new offerings are likely to be less attractive and more onerous, from a financial and operational point of view. Such additional costs, arbitrarily imposed upon the IRCs by the Commission, must ultimately be borne by the rate-paying public. The Commission is respectfully urged to avoid placing such an unnecessary additional financial burden upon the international record communications industry which has heretofore developed an unparalleled history of rate reductions and resistance to the considerable pull of world-wide inflation.

The Commission Should Order AT&T To Make Entrance and Intercity Facilities Available To the International Record Carriers On An Indefeasible Right Of User Basis Under Fair and Equitable Terms.

9. As a joint licensee in several international cables and a joint owner of several earth stations WUI has a continual need to acquire and utilize connecting domestic circuitry to access such facilities from its gateway operating offices. Further, WUI has an affirmative obligation to its rate-paying public to obtain such facilities by the most economical means consistent with sound business planning.

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*See letter of T. W. Scandlyn, Assistant Vice President of AT&T, to Walter R. Hinchman, June 26, 1974.

Acquisition of transoceanic facilities on a capital investment basis -- the most economical means available to WUI -- has facilitated the downward trend in international rates. The public interest will be further served by permitting WUI to acquire its connecting terrestrial circuitry on a similar capital investment basis. Accordingly, WUI submits that if the Commission sees fit to abrogate the existing IRC/AT&T facilities contracts, the IRCs must be permitted to acquire such facilities by indefeasible right of use interest.

10. The Commission has already recognized the benefits inherent in allowing carriers to obtain ownership interests in facilities:

> "We also understand their evident desire to maximize investment as a basis for the opportunity to earn a fair return on capital devoted to public service.... We find that the most logical and equitable formula is one under which ownership is reasonably related to use. Any major departure from this principal would, in essence, mean that a carrier, ready, willing and able to pay for facilities which it actually requires to handle traffic would be required to lease them from a second carrier. The sole function of the second carrier would be that of the investor in facilities on which such second carrier would realize a return at the expense of the first-carrier user." (Second Report and Order on Ownership and Operation of Earth Stations, 5 F.C.C. 2d 812, 818-819).

Elsewhere, the Commission has stated its belief that "the IRU concept is a practical and reasonable method of relating ownership to use where facilities are to be used by more than one carrier..." and that "... common carriers should own the facilities they use to serve the public unless there is some advantage in utilizing the facilities of another carrier or other entity, such as economy, efficiency, spectrum conservation, etc."* WUI submits that no such countervailing circumstances exist with respect to the instant facilities. Accordingly, the public interest and convenience will best be served by a Commission directive that AT&T make available to the IRCs indefeasible right of use interests in such facilities in accordance with the above cited Commission decisions.

Retention of The Existing International Private Line Tariff to IRC Gateway Operating Centers Is In the Public Interest.

11. A second aspect of the Commission's inquiry in the above-captioned proceeding relates to the manner in which the IRCs tariff their international private line service. Under existing international private line tariffs (WUI's Tariff F.C.C. No. 4, for example) service is provided to

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*_All American Cables and Radio, Inc., et al_, 15 F.C.C. 2d 1, 14.

the customer from the carrier's operating center and the customer obtains a connecting "local loop" between his office and the operating center directly from the local telephone company. The Commission has noted that such a tariffing arrangement differs from

(a) international telex, where the IRCs' tariffs provides for service to the customer's office; and

(b) private line services of domestic specialized and satellite common carriers, which are offered to the customer's office.

12. The Commission's Order is silent as to the reasons it is apparently now questioning, after many years of consistent rate reductions, the manner in which the IRCs tariff their private line service. In questioning the dissimilarity in the IRCs' provision of local loops for private line customers as opposed to telex customers, the Commission appears to be urging consistency for the sake of consistency, despite the fact that it is dealing with two wholly distinct and dissimilar services.

13. International telex service is a teleprinter exchange switched service. The customer obtains access into the international telex network via the switching capabilities of the IRC. What is offered is basically not a discrete facility or "pipe", but a switching service. The international

private line or "leased facility"* tariffs, on the other hand, consist of furnishing the particular facility on a contract basis between specified customer terminals.

14. Charging for international telex service is based upon usage. The cost of local loops, enabling customers to access the IRC telex switch, is factored into the overall cost of providing the service and is thereby ultimately reflected in the rate charged to the customer. The cost of each individual local telex loop, while varying somewhat with distance in the gateway city, is relatively uniform. The opposite is true for private line loops, the cost of which may vary significantly with the grade of conditioning and line speed required. Accordingly, any effort to build the "average" local loop cost for private line service into the various private line rates (in a manner equivalent to international telex) would result in considerable discrimination against low speed, minimum conditioned users.

15. No unlawful, unjust or unreasonable discrimination exists by virtue of the fact that international telex customers obtain local loops as an integral part of that service, while international private line customers obtain their own local loops from the local telephone company. Even in the case of telegraph-grade service,

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*WUI Tariff F.C.C. No. 4, S1.01.

the IRCs' cost-per-local loop is greater for private line loops than for telex loops. This is because the similarity in operational specifications of telex loops enables the IRC to obtain economies of scale in telex loops not available in the case of private line loops. For example, the specific and clearly defined telex interface specification has enabled WUI to bundle telex loops at a strategic location in the New York gateway so as to reduce the overall cost of providing telex loops. Other locations are planned for similar economies in the near future. The relatively large number of telex loops (as opposed to private line) and the uniformity of their operation, enable WUI to undertake such bundling on a dedicated telex TDM basis. On the other hand, the enormous variety in private line speeds and conditioning specifications does not lend itself to inclusion in the basic telex bundling scheme.

16. In further support of the relative economy of telex loops is the fact that future Bell System plans for local distribution facilities call for the eventual replacement of all DC circuits with pure analog circuits. Standard, less costly modems have been developed for telex service via such circuits. Private line customers, on the other hand, will be forced to use far more costly traditional modems.

17. It is clear from the foregoing that the distinctions between the IRCs' telex and private line

treatment of local loops is fully justified by the following:

(a) wholly distinct service offerings involved;

(b) telex loop costs are relatively uniform while private line loops vary enormously depending upon speed of service and required conditioning;

(c) cost of private line loops (on per loop basis) is considerably in excess of telex loops.

18. WUI's foregoing justification of its telex and private line tariffs with respect to local loops is without prejudice, however, to its position that the Commission is without authority to require WUI to offer its private line service directly to the premises of its gateway customer. No statutorily proscribed discrimination or preference exists in this regard, nor are such proscriptions even hinted at by the Commission's Order. Commission desire, for the sake of consistency,* to align international private line tariffs with those in the domestic sphere, cannot replace the careful statutory plan (Sections 203-205) of carrier-initiated tariffs.

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*It must be noted that the practical distinction between obtaining an international private line and a domestic private line is nugatory: in each case the customer receives a separate identifiable charge for his international or interexchange facility, as well as a separate identifiable charge for his local loop.

WHEREFORE, for the reasons set forth herein, WUI respectfully submits that neither (a) the IRC/AT&T entrance and intercity facility contracts, nor (b) the IRCs' present private line tariffs to their respective operating centers, should be changed or amended except that in the case of the said facilities contracts the Commission is hereby requested to grant to the IRCs, in lieu thereof, indefeasible right of use interests in such entrance and intercity facilities.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

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Attorney

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June 23, 1975

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/s/ Mary Chin

June 23, 1975

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In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

COMMENTS

American Telephone and Telegraph Company ("AT&T"), pursuant to paragraph 5 of the Commission's Memorandum Opinion and Order herein ("Order"), released May 7, 1975 (FCC 75-451),* respectfully submits the following comments:

1. The Commission's May 7, 1975 Order requests comments on whether it should require the international record carriers ("IRCs") to obtain entrance facilities - both from cable heads and earth stations - and intercity facilities from AT&T pursuant to tariff rather than contract; and, in addition, whether the IRCs should be required to offer international private line service directly to the premises of the IRCs' gateway city customers.

2. AT&T has been providing entrance and intercity facilities to IRCs pursuant to contract for many years. Certain

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* By Order released June 11, 1975 (Mimeo 51382), the Chief, Common Carrier Bureau extended the time for filing comments herein until June 23, 1975.

Bell Operating Companies have also provided intercity entrance facilities from radio sites to the IRCs under long standing special agreements. These contract arrangements have heretofore proved to be satisfactory to both the Bell System and the IRCs, and take into account the discrete needs of the IRCs for facilities between gateway cities and for entrance channels from cable heads, radio sites and earth stations to their operating centers in metropolitan areas. Nevertheless, AT&T is prepared to provide such facilities to the IRCs pursuant to tariffs at appropriate rates if the Commission determines that the public interest would be served by discontinuing the present arrangements.

3. AT&T is unaware of any reason why the IRCs should not be required to furnish under tariff international private line service directly to their customers' premises in gateway cities. Local distribution facilities are presently available to the IRCs under the provisions of currently effective Bell System Operating Company OCC facility tariffs on file with the Commission. These facilities enable IRCs to provide end-to-end private line service to their customers in gateway cities. Indeed, such facilities are presently utilized by the IRCs in providing certain other services under tariff on an end-to-end basis within the gateway cities.

4. AT&T recognizes that changes in existing arrangements of the nature under consideration herein could have a significant impact on IRCs or their customers. Accordingly, if the Commission determines that the public interest would be served thereby, AT&T is prepared to participate in discussions under the aegis of the Commission either before or after such changes may be adopted for the purpose of considering the proposed arrangements.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/ Alfred C. Partoll
Alfred C. Partoll

By /s/ H. A. Davenport
H. A. Davenport

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FEDERAL COMMUNICATIONS COMMISSION
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June 29, 1977

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New York, New York 10007

Re: AT&T Transmittal No. 12758; AT&T New Jersey Bell, Pacific Telephone & Telegraph, and Southern Bell Telephone Transmittal No. 5

Gentlemen:

The above-captioned transmittal letters and accompanying tariff materials were filed pursuant to the Commission's Decision in Docket No. 20452, 63 FCC 2d 761 (1977). These tariffs were filed on May 27, 1977, and are scheduled to become effective on August 25, 1977. Various petitions to reject or suspend have been filed against these tariffs. We request a postponement because of (1) the complexity of the subject-matter, (2) because the Commission will hold few formal meetings during the month of August, (3) because key members of the Bureau staff will either be attending the NARUC Annual Regulatory Studies Program from August 1 to August 12, 1977 or be on vacation, and (4) because of several requests for extensions of time to file petitions. Therefore, we request that you defer the effective date of those tariffs until September 16, 1977, if at all possible, to permit consideration of the tariffs and all pleadings by the full Commission before the tariffs become effective. If you intend to defer the effective dates, please so inform us on or before July 6, 1977.

Sincerely yours,

Philip Permut
Philip V. Permut
Acting Deputy Chief
Common Carrier Bureau

cc: All parties Docket No. 20452

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of BELL SYSTEM OPERATING COMPANIES Proposed Tariff F.C.C. No. 4, Overseas Connecting Facilities for Other Common Carriers	Transmittal No. 5
In the Matter of AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT Proposed Revisions to Tariff F.C.C. No. 266, Facilities for Other Common Carriers	Transmittal No. 12758

REPLY
(To be acted on by the Commission)

American Telephone and Telegraph Company ("AT&T"), for and on behalf of itself and the Bell System Operating Companies issuing Tariff F.C.C. No. 4, pursuant to Section 1.773(c) of the Commission's Rules, hereby replies to the Petitions for Suspension, dated June 21, 1977, of RCA Global Communications, Inc. ("RCA Globcom") and ITT World Communications, Inc. ("ITT"). In support whereof, it is respectfully stated as follows:

1. On May 27, 1977 AT&T filed a new tariff with the Commission, Tariff F.C.C. No. 4, with an effective date of August 25, 1977 and in addition, it filed related revisions to tariffs on file with the Commission offering facilities to Other Common Carriers.* RCA Globcom and ITT

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* Tariff F.C.C. No. 4 was issued by American Telephone and Telegraph Company, Long Lines Department, New Jersey Bell Telephone Company, The Pacific Telephone and Telegraph Company and Southern Bell Telephone Company.

have petitioned the Commission to suspend the tariff filings in question and set them for investigation.*

2. The tariff filings in question were made in compliance with the directions of the Commission in its Final Decision and Order, released March 23, 1977, in Docket No. 20452 (FCC 77-176). In further compliance with the order, notices of termination of existing written agreements for providing facilities by various Bell System Companies to International Record Carriers were sent to the latter carriers. The terminations are to become effective, pursuant to the terms of those agreements, after the passage of specified periods of time, e.g., 90 days in the case of lease agreements between AT&T's Long Lines Department and International Record Carriers. In the notices of termination, the carriers were informed that the facilities furnished under the agreements would be available under Other Common Carrier tariffs on file with the Commission, e.g., AT&T Tariff F.C.C. No. 266, and under the tariff filings in question.

3. There is no dispute that the Commission has ordered that facilities be furnished in the future to International Record Carriers at the same rates as comparable facilities are furnished to Other Common Carriers.**

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* Each petitioner has also sought rejection in separate but, for each, substantially identical petitions to reject. An opposition to those petitions is being filed at the same time as this Reply.

** See Final Decision and Order, paras. 13 and 17.

The tariff filings, when they become effective on August 25, 1977, along with the agreement termination actions described above, will accomplish this result while taking account of differences in the manner in which facilities are furnished for overseas communications. The Bell System Operating Companies see no reason for setting for investigation or suspending these tariff filings which were filed pursuant to and in compliance with Commission orders unless the Commission contemplates action on pending petitions for reconsideration filed by International Record Carriers which would make such compliance inappropriate and unless, in connection therewith, the Commission's direction to AT&T to eliminate differences in rates were stayed.*

4. There is an additional reason why the relief requested should not be granted under present circumstances. The background of the tariff filings in question includes, most importantly, the Commission's action in its Memorandum Opinion and Order in Docket No. 20099 (FCC 75-450), 52 F.C.C.2d 727 (1975). The Commission terminated that proceeding on the basis of an agreement, commonly referred to as the "Settlement Agreement," between and among the parties to that proceeding. The International Record Carriers, including RCA Globcom and ITT, were parties to that agreement and indeed, each of them signed the Settlement Agreement. A most significant aspect of the Settlement Agreement related to rates to be charged for facilities furnished by Bell System Companies to Other

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* See In the Matter of AT&T, Termination of Telpak Service, Memorandum Opinion and Order, released June 13, 1977 (FCC 77-384), para. 23.

Common Carriers including, of course, the other parties to the Settlement Agreement. The rates to be applied as a result of the actions taken by the Bell System Operating Companies in response to the Commission's directions in Docket No. 20452, including the rates for "overseas connecting facilities" under Tariff F.C.C. No. 4, are the same as the rates agreed to by the parties to the Settlement Agreement. Thus, insofar as RCA Globcom and ITT take issue with rates to be charged under the tariffs in question, they are taking issue with rates they agreed to in signing the Settlement Agreement and which the Commission accepted as an interim settlement of the proceedings subject to certain reservations relating to International Record Carriers which have been resolved in Docket No. 20452.

5. In its order terminating Docket No. 20099, the Commission provided for the commencement of a proceeding to investigate questions not disposed of in Docket No. 20099 relating to facilities provided to International Record Carriers. It instituted Docket No. 20452 for this purpose. The Commission noted that AT&T furnished facilities between gateway offices and earth station/cable head locations (entrance facilities) and between gateway offices (intergateway facilities) pursuant to contract, whereas similar facilities were provided to Other Common Carriers pursuant to tariff (e.g., AT&T Tariff F.C.C. No. 266; Pacific Telephone and Telegraph Company Tariff F.C.C. No. 126). The Commission asked whether it should require AT&T to provide

facilities to the International Record Carriers pursuant to tariff rather than under contract.*

6. On the basis of the written pleadings of the parties to Docket No. 20452, including pleadings of AT&T and each of the petitioners herein, the Final Decision and Order of the Commission was issued. In it the Commission directed the Bell System Companies to eliminate any discrimination in furnishing facilities to Other Common Carriers and International Record Carriers. The Commission stated that it would waive the requirements of its rules relating to cost justification if, in compliance with its directions, tariffs were filed which offered facilities to International Record Carriers under the same terms and conditions as applicable to comparable facilities offered to Other Common Carriers. A waiver of cost justification is entirely appropriate under the circumstances because Other Common Carriers are furnished facilities at rates which are not cost-justified in accordance with Section 61.38 of the Rules. Rather, the rates are a result of the negotiations conducted under Commission auspices in Docket 20099 during which all the parties settled their differences on an interim basis and entered into the Settlement Agreement which was accepted by the Commission.

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* In the Matter of Interconnection Facilities Provided to International Record Carriers, Memorandum Opinion and Order, released May 7, 1975, Docket 20452 (FCC 75-451), paras. 1 and 3.

7. Pursuant to the Commission's directions in Docket 20452, the Bell System Operating Companies filed on May 27, 1977 Tariff F.C.C. No. 4, which incorporated by reference rates for comparable facilities offered in other Common Carrier tariffs filed with the Commission. No supporting cost data was filed in view of the Commission's waivers of Section 61.38 of the Rules and of prohibitions against incorporation by reference. (See Special Permission Order No. 8372.) The result of the Commission's action and complying tariff revisions is the integration of the conclusion of Docket No. 20099 with the conclusion of the separate Commission consideration of the International Record Carrier questions in Docket No. 20452. International Record Carriers are to be in the same relative rate position as all Other Common Carriers vis-a-vis the Bell System by virtue of the tariff filings in question. At the same time those filings preserve the particular manner in which overseas connecting facilities are furnished, thereby avoiding unwarranted and unnecessary burdens to insure the continued availability of high quality communications to the public.*

THE ARGUMENTS OF THE PETITIONERS DO NOT WARRANT SUSPENSION AND INVESTIGATION OF THE TARIFF FILINGS

8. The International Record Carriers' arguments reflect many of those advanced in connection with their Petitions for Reconsideration of the Final Decision and

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* See Transmittal No. 5, May 26, 1977, a copy of which is attached hereto, for a concise review of the considerations which led to this result.

Order in Docket No. 20452, one of which relates to the nature of facilities to be offered in the future. The advent of tariffs governing the relationship of carriers in place of agreements will not, however, be accompanied by significant changes in the manner of furnishing facilities. Although increased rates, at the same level as applicable to the other Other Common Carriers who were also parties to the Settlement Agreement in Docket No. 20099 will result, no facility offerings are to be eliminated.

9. In brief, Tariff F.C.C. No. 4 offers facilities to Other Common Carriers authorized to provide overseas services -- denominated "overseas connecting facilities" -- which are the direct equivalent of the entrance-type facilities now furnished under agreements with International Record Carriers. No essential change in the manner in which such facilities are furnished between International Record Carriers' operating centers and jointly used cableheads and earth stations will result. The only significant change to be visited upon International Record Carriers will be in the rates to be paid for such facilities.* The lower existing rates will be replaced upon termination of the agreements with higher Other Common Carrier rates. In addition, with termination of the agreements, existing Other Common Carrier rates for facilities between International

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* As the Commission pointed out in the Final Decision and Order in Docket No. 20452, if as a result of paying these increased rates a carrier's revenue requirements become such that an increase in revenues is appropriate, it is open to the International Record Carriers to seek adjustment in their rates by filing revisions to their tariffs.

Record Carrier locations, *e.g.*, operating centers in different gateway cities, will apply. These latter rates are presently in existence in tariffs on file with the Commission and no Commission action is called for. They are the same rates as those referred to in the Settlement Agreement, signed by the International Record Carriers in 1975, and accepted by the Commission.

10. As stated above, the International Record Carrers will in the future be offered facilities at rates at the same level as all Other Common Carriers for comparable facilities. Existing differences in interim rates between state-by-state Other Common Carrier rates found in the various Other Common Carrier facility tariffs, *e.g.*, The Pacific Telephone Tariff F.C.C. No. 126, and nationwide Other Common Carrier rates found in Tariff F.C.C. No. 266, complained of in Point II of RCA Globcom's Petition, flow from differences in the underlying basis for each. These differences were recognized and have existed since the negotiation of the Settlement Agreement. Tariff F.C.C. No. 266 rates are the same as rates set forth in Tariff F.C.C. No. 260 since each relates to offerings which cross state lines. Since state Other Common Carrier offerings relate to facilities which do not cross state lines, the various Other Common Carrier facility rates were set at levels equal to each state's private line rates, with substantial discounts for intraexchange and interexchange

facilities up to 40 miles. All Other Common Carriers enjoy the same benefits from this arrangement.

11. RCA Globcom would have the Commission investigate in a new proceeding the rates found in AT&T's Tariff F.C.C. No. 260 which are referenced in Tariff F.C.C. No. 266. Tariff No. 260 is the subject of extensive investigation in Dockets Nos. 18128 and 20814. There is no need for another proceeding for that purpose. Nor is there any need to suspend the tariff filings in question, as requested by ITT, to await continued developments in Docket No. 18128. The rates in question here are the result of the Settlement Agreement and are to continue under the terms of that agreement on an interim basis until rates cost-justified pursuant to Section 61.38 of the Rules for facilities for Other Common Carriers become effective. The Bell System Companies have advised the Commission pursuant to its direction that they will file such rates before December 1, 1978.

12. RCA Globcom also takes issue with the termination of the availability of groups and supergroups to International Record Carriers as a result of the termination of agreements previously described. With the exception of group facilities used in connection with wide band data service, no International Record Carrier has ordered any such facilities.* The tariff filings in question will offer 50 and 56 kilobit data service. The effect will be that no facility will be withdrawn from International Record Carriers as a result of the termination of the agrements.

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* With the further exception of the group facility referred to in AT&T's Petition for Clarification, dated April 25, 1977, in Docket 20452.

13. RCA Globcom cites the absence in Tariff F.C.C. No. 4 of an offering of voice-grade circuits having a fixed loss in support of its request for suspension. At a meeting held June 28, 1977, called by AT&T for purposes of explaining procedures to be followed under the tariffs to representatives of the International Record Carriers, including RCA Globcom and ITT, representatives of AT&T stated that overseas connecting facilities terminated in a standard fixed level at the International Record Carrier's operating center will be provided whenever conditioning is ordered under applicable tariffs and a fixed level is requested. ("Fixed level" is equivalent to "fixed loss.") The way in which a fixed level would be provided was explained and questions of International Record Carrier representatives were answered at the meeting. In addition, another of RCA Globcom's objections, i.e., relating to the provision of C2/Overseas Conditioning, was discussed at that meeting. AT&T's engineering representative at the meeting undertook to investigate the question and the International Record Carriers will be informed of the results of the investigation. There is no reason to expect that the result will be inconsistent with the general principle that in treating International Record Carriers as Other Common Carriers, no disruption of the present manner of providing overseas services is intended.

14. With respect to restoration of international facilities, AT&T's Petition for Clarification, filed on April 25, 1977 in Docket 20452, makes it clear that there is no intent on the part of the Bell System Operating Companies to depart from the existing restoration plan.

15. RCA Globcom's objection to the absence of a temporary rate of less than one month in the tariff filings in question is based on an alleged failure to comply with Section 214 of the Act. In essence, RCA Globcom is complaining about an increase in a rate stemming from a change in a regulation, not the elimination of a service. The one-month minimum is common to OCC tariffs in general and the result of the tariff filings in question is simply that it will be extended to International Record Carriers as well. With respect to temporary television facilities, AT&T in its Petition for Clarification pointed out on April 25, 1977 that the March 23, 1977 order may be read as inapplicable to the provision of intercity television transmission facilities used by International Record Carriers in providing overseas television service. Accordingly, AT&T proposed to continue present arrangements except with respect to the local channel facilities involved until such time as

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* A change in rates has never been held to be subject to Section 214. See In the Matter of AT&T, supra, at para. 18.

the Commission ruled otherwise. The local channel facilities are the same as those offered under Other Common Carrier facility tariffs and will be provided thereunder.

16. RCA also sees discrimination in that cablehead/earth station locations are treated as Category B cities under Tariff F.C.C. No. 260 whereas international border crossing points are treated as Category A cities. The criteria which are used to determine whether a given location qualifies for Category A rate treatment are set forth in the material that was filed in support of the Multi-schedule Private Line (MPL) tariff on April 19, 1976. An investigation concerning that tariff filing, including the propriety of the Category A criteria, is pending in Docket No. 20814. Whether, under the MPL criteria, any or all of the cablehead/earth station locations qualify for Category A rate treatment is presently being considered by AT&T.

17. RCA also takes issue with AT&T Tariff F.C.C. No. 260 insofar as it treats the same city as Category A for the United States Government and Category B for others. RCA again chooses the wrong proceeding to challenge particular features of AT&T Tariff F.C.C. No. 260. In any event the effect of its argument is that it should be released from the Docket No. 20099 Settlement Agreement wherein it accepted the principle that AT&T Tariff F.C.C. No. 260 rate levels should apply to OCC facility arrangements offered in AT&T Tariff F.C.C. No. 266.

18. Finally, RCA Globcom and ITT each argues that it should be entitled to purchase indefeasible rights of user to both entrance-type facilities and intercity facilities, rather than to be required to pay Other Common Carriers tariff rates. The Commission has pointed out that this issue was not a part of the events which had led to the tariff filings in question and has not been an issue in Docket No. 20452.* In view of the different considerations applicable to the construction and operation of facilities and the provision of service to the public in international and domestic areas, AT&T submits that the request has no merit. But in any event, if an issue of this magnitude is to be addressed it should be only after all parties have had adequate notice and opportunity to comment. There is a host of legal and factual questions bearing on the fundamental issue of whether the extension of the concept of indefeasible right of users to domestic portions to international services is in the public interest. In the meantime, RCA Globcom and ITT should not be heard to raise this completely collateral issue in the course of complaining of rates it agreed to in signing the Settlement Agreement as a basis for seeking suspension of the tariff filings herein.

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* Final Decision and Order, Docket No. 20452, released March 23, 1977, para. 6, note.

CONCLUSION

19. The Bell System has filed tariffs which comply with the Commission's directions and the Bell System Companies have taken appropriate action to terminate agreements, the result of which is to put International Record Carriers basically in the same position as all Other Common Carriers with respect to rates to be paid and with respect to all other terms and conditions except where a different manner of providing facilities for overseas communications calls for differing treatment. In so doing the Bell System believes that it has complied with the directions of the Commission and has fulfilled its responsibilities to the Commission as it presently understands them.

WHEREFORE, AT&T respectfully submits that the Petitions for Suspension should be denied in all respects.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/Alfred C. Partoll
Alfred C. Partoll

By /s/Gerald E. Murray
Gerald E. Murray

195 Broadway
New York, New York 10007

By /s/Edgar Mayfield
Edgar Mayfield

By /s/Alfred G. Walton
Alfred G. Walton

Bedminster, New Jersey 07921

Its Attorneys

July 5, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

BELL SYSTEM OPERATING COMPANIES) Transmittal No. 5

Proposed Tariff F.C.C. No. 4,
Overseas Connecting Facilities
for Other Common Carriers

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY, LONG LINES DEPARTMENT) Transmittal No. 12758

Proposed Revisions to Tariff
F.C.C. No. 266, Facilities for
Other Common Carriers

To: Chief, Common Carrier Bureau

OPPOSITION

American Telephone and Telegraph Company ("AT&T"), for and on behalf of itself and the Bell System Operating Companies issuing Tariff F.C.C. No. 4, pursuant to Section 1.45 of the Commission's Rules, hereby replies to the Petitions for Rejection, dated June 21, 1977, of RCA Global Communications, Inc. ("RCA Globcom") and ITT World Communications, Inc. ("ITT"). In support whereof, it is respectfully stated as follows:

1. On May 27, 1977 AT&T filed a new tariff with the Commission, Tariff F.C.C. No. 4, with an effective date of August 25, 1977 and in addition, it filed related revisions to tariffs on file with the Commission offering facilities to Other Common Carriers.* RCA Globcom and ITT

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* Tariff F.C.C. No. 4 was issued by American Telephone and Telegraph Company, Long Lines Department, New Jersey Bell Telephone Company, The Pacific Telephone and Telegraph Company and Southern Bell Telephone Company.

have petitioned the Commission to reject the tariff filings in question.*

2. The tariff filings in question were made in compliance with the directions of the Commission in its Final Decision and Order, released March 23, 1977, in Docket No. 20452 (FCC 77-176). In further compliance with the order, notices of termination of existing written agreements for providing facilities by various Bell System Companies to International Record Carriers were sent to the latter carriers. The terminations are to become effective, pursuant to the terms of those agreements, after the passage of specified periods of time, e.g., 90 days in the case of lease agreements between AT&T's Long Lines Department and International Record Carriers. In the notices of termination, the carriers were informed that the facilities furnished under the agreements would be available under Other Common Carrier tariffs on file with the Commission, e.g., AT&T Tariff F.C.C. No. 266, and under the tariff filings in question.

3. There is no dispute that the Commission has ordered that facilities be furnished in the future to International Record Carriers at the same rates as comparable facilities are furnished to Other Common Carriers.**

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* Each petitioner has also sought suspension in separate but, for each, substantially identical petitions to reject. A reply to those petitions is being filed at the same time as this Opposition.

** See Final Decision and Order, paras. 13 and 17.

The tariff filings, when they become effective on August 25, 1977, along with the agreement termination actions described above, will accomplish this result while taking account of differences in the manner in which facilities are furnished for overseas communications. The Bell System Operating Companies see no basis for rejecting the tariffs. They were filed pursuant to and in compliance with Commission orders and raise no issue of law with respect to which the Commission may exercise its rejection powers.* Similarly, there is no basis for investigation or suspension. (See our Reply to Petitions to Suspend, filed concurrently.)

4. There is an additional reason why the relief requested should not be granted under present circumstances. The background of the tariff filings in question includes, most importantly, the Commission's action in its Memorandum Opinion and Order in Docket No. 20099 (FCC 75-450), 52 F.C.C.2d 727 (1975). The Commission terminated that proceeding on the basis of an agreement, commonly referred to as the "Settlement Agreement," between and among the parties to that proceeding. The International Record Carriers, including RCA Globcom and ITT, were parties to that agreement and, indeed, each of them signed the Settlement Agreement. A most significant aspect of the Settlement Agreement related to rates to be charged for facilities furnished by Bell System Companies to Other

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* See In the Matter of AT&T, Termination of Telpak Service, Memorandum Opinion and Order, released June 13, 1977 (FCC 77-384), paras. 11 and 23.

Common Carriers including, of course, the other parties to the Settlement Agreement. The rates to be applied as a result of the actions taken by the Bell System Operating Companies in response to the Commission's directions in Docket No. 20452, including the rates for "overseas connecting facilities" under Tariff F.C.C. No. 4, are the same as the rates agreed to by the parties to the Settlement Agreement. Thus, insofar as RCA Globcom and ITT take issue with rates to be charged under the tariffs in question, they are taking issue with rates they agreed to in signing the Settlement Agreement and which the Commission accepted as an interim settlement of the proceedings subject to certain reservations relating to International Record Carriers which have been resolved in Docket No. 20452.

5. In its order terminating Docket No. 20099, the Commission provided for the commencement of a proceeding to investigate questions not disposed of in Docket No. 20099 relating to facilities provided to International Record Carriers. It instituted Docket No. 20452 for this purpose. The Commission noted that AT&T furnished facilities between gateway offices and earth station/cable head locations (entrance facilities) and between gateway offices (inter-gateway facilities) pursuant to contract, whereas similar facilities were provided to Other Common Carriers pursuant to tariff (e.g., AT&T Tariff F.C.C. No. 266; Pacific Telephone and Telegraph Company Tariff F.C.C. No. 126). The Commission asked whether it should require AT&T to provide

facilities to the International Record Carriers pursuant to tariff rather than under contract.*

6. On the basis of the written pleadings of the parties to Docket No. 20452, including pleadings of AT&T and each of the petitioners herein, the Final Decision and Order of the Commission was issued. In it the Commission directed the Bell System Companies to eliminate any discrimination in furnishing facilities to Other Common Carriers and International Record Carriers. The Commission stated that it would waive the requirements of its rules relating to cost justification if, in compliance with its directions, tariffs were filed which offered facilities to International Record Carriers under the same terms and conditions as applicable to comparable facilities offered to Other Common Carriers. A waiver of cost justification is entirely appropriate under the circumstances because Other Common Carriers are furnished facilities at rates which are not cost-justified in accordance with Section 61.38 of the Rules. Rather, the rates are a result of the negotiations conducted under Commission auspices in Docket 20099 during which all the parties settled their differences on an interim basis and entered into the Settlement Agreement which was accepted by the Commission.

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* In the Matter of Interconnection Facilities Provided to International Record Carriers, Memorandum Opinion and Order, released May 7, 1975, Docket 20452 (FCC 75-451), paras. 1 and 3.

7. Pursuant to the Commission's directions in Docket 20452, the Bell System Operating Companies filed on May 27, 1977 Tariff F.C.C. No. 4, which incorporated by reference rates for comparable facilities offered in Other Common Carrier tariffs filed with the Commission. No supporting cost data was filed in view of the Commission's waivers of Section 61.38 of the Rules and of prohibitions against incorporation by reference. (See Special Permission Order No. 8372.) The result of the Commission's action and complying tariff revisions is the integration of the conclusion of Docket No. 20099 with the conclusion of the separate Commission consideration of the International Record Carrier questions in Docket No. 20452. International Record Carriers are to be in the same relative rate position as all Other Common Carriers vis-a-vis the Bell System by virtue of the tariff filings in question. At the same time those filings preserve the particular manner in which overseas connecting facilities are furnished, thereby avoiding unwarranted and unnecessary burdens to insure the continued availability of high quality communications to the public.*

8. The Commission recently summarized the grounds on which it may, under law, reject tariff filings as follows:

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* See Transmittal No. 5, May 26, 1977, a copy of which is attached hereto, for a concise review of the considerations which led to this result.

> "The grounds upon which we may reject and return tariff filings are (1) failure to publish an effective date, as required by the Communications Act, 47 U.S.C. §203, and our rules; (2) lack of any requisite Commission-granted authority to provide the service offered by the tariff, such as Section 214 authorization, 47 U.S.C. §214; and (3) any other prima facie unlawfulness such as demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. United Video, Inc., 49 F.C.C. 2d 878 (1974); see also, Municipal Light Boards v. FPC, 450 F. 2d 1341 (D.C. Cir. 1971), Associated Press v. FCC, 448 F. 2d 1095 (D.C. Cir. 1971). . . ." In the Matter of AT&T, Long Lines Department, Termination of Telpak Service (FCC 77-384), released June 13, 1977, para. 11.

None of the grounds exist in the circumstances before the Commission on the tariff filings in question. The tariffs were filed on 90 days' notice, with an effective date in compliance with a Commission order and pursuant to appropriate waivers; the Bell System Companies involved have the authority -- indeed are under Commission direction -- to make the offerings; and petitioners have raised no issues suggesting prima facie unlawfulness. Accordingly, as developed in detail herein, there is no basis for the relief requested.

THE ARGUMENTS OF THE PETITIONERS DO NOT WARRANT REJECTION OF THE TARIFF FILINGS

9. The International Record Carriers' arguments reflect many of those advanced in connection with their Petitions for Reconsideration of the Final Decision and

Order in Docket No. 20452, and ignore the limited bases on which the Commission may exercise the extraordinary remedy of rejection. One argument raised relates to the nature of facilities to be offered in the future. The advent of tariffs governing the relationship of carriers in place of agreements will not, however, be accompanied by significant changes in the manner of furnishing facilities. Although increased rates, at the same level as applicable to the other Other Common Carriers who were also parties to the Settlement Agreement in Docket No. 20099 will result, no facility offerings are to be eliminated.

10. In brief, Tariff F.C.C. No. 4 offers facilities to Other Common Carriers authorized to provide overseas services -- denominated "overseas connecting facilities" -- which are the direct equivalent of the entrance-type facilities now furnished under agreements with International Record Carriers. No essential change in the manner in which such facilities are furnished between International Record Carriers' operating centers and jointly used cableheads and earth stations will result. The only significant change to be visited upon International Record Carriers will be in the rates to be paid for such facilities.* The lower existing rates will be replaced upon termination of the agreements with higher Other Common Carrier rates. . In addition, with termination of the agreements, existing Other Common Carrier rates for facilities between International

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* As the Commission pointed out in the Final Decision and Order in Docket No. 20452, if as a result of paying these increased rates a carrier's revenue requirements become such that an increase in revenues is appropriate, it is open to the International Record Carriers to seek adjustment in their rates by filing revisions to their tariffs.

Record Carrier locations, e.g., operating centers in different gateway cities, will apply. These latter rates are presently in existence in tariffs on file with the Commission and no Commission action is called for. They are the same rates as those referred to in the Settlement Agreement, signed by the International Record Carriers in 1975, and accepted by the Commission.

11. As stated above, the International Record Carrers will in the future be offered facilities at rates at the same levels as all Other Common Carriers for comparable facilities. Existing differences in interim rates between state-by-state Other Common Carrier rates found in the various Other Common Carrier facility tariffs, e.g., The Pacific Telephone Tariff F.C.C. No. 126, and nationwide Other Common Carrier rates found in Tariff F.C.C. No. 266, complained of in Point II of RCA Globcom's Petition, flow from differences in the underlying basis for each. These differences were recognized and have existed since the negotiation of the Settlement Agreement. Tariff F.C.C. No. 266 rates are the same as rates set forth in Tariff F.C.C. No. 260 since each relates to offerings which cross state lines. Since state Other Common Carrier offerings relate to facilities which do not cross state lines, the various Other Common Carrier facility rates were set at levels equal to each state's private line rates, with substantial discounts for intraexchange and interexchange

facilities up to 40 miles. All Other Common Carriers enjoy the same benefits from this arrangement.

12. RCA Globcom would have the Commission investigate in a new proceeding the rates found in AT&T's Tariff F.C.C. No. 260 which are referenced in Tariff F.C.C. No. 266. Tariff No. 260 is the subject of extensive investigation in Dockets Nos. 18128 and 20814. There is no need for another proceeding for that purpose. Nor is there any need to reject the tariff filings in question, as requested by ITT, to await continued developments in Docket No. 18128. The rates in question here are the result of the Settlement Agreement and are to continue under the terms of that agreement on an interim basis until rates cost-justified pursuant to Section 61.38 of the Rules for facilities for Other Common Carriers become effective. The Bell System Companies have advised the Commission pursuant to its direction that they will file such rates before December 1, 1978.

13. RCA Globcom also takes issue with the termination of the availability of groups and supergroups to International Record Carriers as a result of the termination of agreements previously described. With the exception of group facilities used in connection with wide band data service, no International Record Carrier has ordered any such facilities.* The tariff filings in question will offer 50 and 56 kilobit data service. The effect will be that no facility will be withdrawn from International Record Carriers as a result of the termination of the agrements.

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* With the further exception of the group facility referred to in AT&T's Petition for Clarification, dated April 25, 1977, in Docket 20452.

14. RCA Globcom cites the absence in Tariff F.C.C. No. 4 of an offering of voice-grade circuits having a fixed loss in support of its request for suspension. At a meeting held June 28, 1977, called by AT&T for purposes of explaining procedures to be followed under the tariffs to representatives of the International Record Carriers, including RCA Globcom and ITT, representatives of AT&T stated that overseas connecting facilities terminated in a standard fixed level at the International Record Carrier's operating center will be provided whenever conditioning is ordered under applicable tariffs and a fixed level is requested. ("Fixed level" is equivalent to "fixed loss.") The way in which a fixed level would be provided was explained and questions of International Record Carrier representatives were answered at the meeting. In addition, another of RCA Globcom's objections, i.e., relating to the provision of C2/Overseas Conditioning, was discussed at that meeting. AT&T's engineering representative at the meeting undertook to investigate the question and the International Record Carriers will be informed of the results of the investigation. There is no reason to expect that the result will be inconsistent with the general principle that in treating International Record Carriers as Other Common Carriers, no disruption of the present manner of providing overseas services is intended.

15. With respect to restoration of international facilities, AT&T's Petition for Clarification, filed on April 25, 1977 in Docket 20452, makes it clear that there is no intent on the part of the Bell System Operating Compniaes to depart from the existing restoration plan.

16. RCA Globcom's objection to the absence of a temporary rate of less than one month in the tariff filings in question is based on an alleged failure to comply with Section 214 of the Act. In essence, RCA Globcom is complaining about an increase in a rate stemming from a change in a regulation, not the elimination of a service. The one-month minimum is common to OCC tariffs in general and the result of the tariff filings in question is simply that it will be extended to International Record Carriers as well. With respect to temporary television facilities, AT&T in its Petition for Clarification pointed out on April 25, 1977 that the March 23, 1977 order may be read as inapplicable to the provision of intercity television transmission facilities used by International Record Carriers in providing overseas television service. Accordingly, AT&T proposed to continue present arrangements except with respect to the local channel facilities involved until such time as

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* A change in rates has never been held to be subject to Section 214. See In the Matter of AT&T, supra, at para. 18.

the Commission ruled otherwise. The local channel facilities are the same as those offered under Other Common Carrier facility tariffs and will be provided thereunder.

17. RCA also sees discrimination in that cablehead/earth station locations are treated as Category B cities under Tariff F.C.C. No. 260 whereas international border crossing points are treated as Category A cities. The criteria which are used to determine whether a given location qualifies for Category A rate treatment are set forth in the material that was filed in support of the Multi-schedule Private Line (MPL) tariff on April 19, 1976. An investigation concerning that tariff filing, including the propriety of the Category A criteria, is pending in Docket No. 20814. Whether, under the MPL criteria, any or all of the cablehead/earth station locations qualify for Category A rate treatment is presently being considered by AT&T.

18. RCA also takes issue with AT&T Tariff F.C.C. No. 260 insofar as it treats the same city as Category A for the United States Government and Category B for others. RCA again chooses the wrong proceeding to challenge particular features of AT&T Tariff F.C.C. No. 260. In any event the effect of its argument is that it should be released from the Docket No. 20099 Settlement Agreement wherein it accepted the principle that AT&T Tariff F.C.C. No. 260 rate levels should apply to OCC facility arrangements offered in AT&T Tariff F.C.C. No. 266.

19. Finally, RCA Globcom and ITT each argues that it should be entitled to purchase indefeasible rights of user to both entrance-type facilities and intercity facilities, rather than to be required to pay Other Common Carriers tariff rates. The Commission has pointed out that this issue was not a part of the events which had led to the tariff filings in question and has not been an issue in Docket No. 20452.* In view of the different considerations applicable to the construction and operation of facilities and the provision of service to the public in international and domestic areas, AT&T submits that the request has no merit. But in any event, if an issue of this magnitude is to be addressed it should be only after all parties have had adequate notice and opportunity to comment. There is a host of legal and factual questions bearing on the fundamental issue of whether the extension of the concept of indefeasible right of users to domestic portions to international services is in the public interest. In the meantime, RCA Globcom and ITT should not be heard to raise this completely collateral issue in the course of complaining of rates it agreed to in signing the Settlement Agreement as a basis for seeking rejection of the tariff filings herein.

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* Final Decision and Order, Docket No. 20452, released March 23, 1977, para. 6, note.

CONCLUSION

20. None of the allegations made by the petitioners warrant or require the exercise of the extraordinary power of rejection. Indeed, as shown herein, there is no merit to their allegations. The Bell System has filed tariffs which comply with the Commission's directions and the Bell System Companies have taken appropriate action to terminate agreements, the result of which is to put International Record Carriers basically in the same position as all Other Common Carriers with respect to rates to be paid and with respect to all other terms and conditions except where a different manner of providing facilities for overseas communications calls for differing treatment. In so doing the Bell System believes that it has complied with the directions of the Commission and has fulfilled its responsibilities to the Commission as it presently understands them.

WHEREFORE, AT&T respectfully submits that the Petitions for Rejection should be denied in all respects.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/Alfred C. Partoll
Alfred C. Partoll

By /s/Gerald E. Murray
Gerald E. Murray

195 Broadway
New York, New York 10007

By /s/Edgar Mayfield
Edgar Mayfield

By /s/Alfred G. Walton
Alfred G. Walton

Bedminster, New Jersey 07921

Its Attorneys

July 5, 1977

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of American Telephone and Telegraph Company in Transmittal Nos. 5 and 12758 were served this 5th day of July, 1977, by mailing copies thereof by United States mail, postage prepaid, to the following persons at the addresses shown below:

Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Ruth V. Reel, Esq.
Chief, Tariffs and Services Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Mr. J. A. Berenger
The French Telegraph Cable Company
25 Broad Street
New York, New York 10004

Joseph J. Jacobs, Esq.
ITT World Communications Inc.
67 Broad Street
New York, New York 10004

Roderick A. Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Robert Michelson, Esq.
Western Union International, Inc.
One WUI Plaza
New York, New York 1000[illegible]

Warren Y. Zeger, Esq.
Comsat General Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

/s/ John T. Egan
John T. Egan

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities) Docket No. 20452
Provided to the International)
Record Carriers)

REPLY

RCA Global Communications, Inc. (RCA Globcom) hereby submits its reply in the above-captioned proceeding pursuant to the Commission's Memorandum Opinion and Order released on May 7, 1975 as modified by its Order released on June 11, 1975.

1. The first of the two issues which are the subject of this inquiry relates to whether American Telephone and Telegraph Company (AT&T) should provide entrance facilities and facilities between gateway cities to the international record carriers (IRCs) pursuant to tariff rather than pursuant to the contracts which are now in effect. RCA Globcom notes that each party filing comments in this proceeding has stated that the contracts now in effect have worked well./ Indeed, the existing contracts have provided a highly suitable basis for the effective and efficient provision of the IRCs' services. In the absence of any complaint concerning these contracts, in view of the statutory recognition of contracts as a proper means for the provision of facilities by one carrier to another,

in view of consistent Commission policy supporting the use of contracts under these circumstances, and in the absence of any showing in the record in this proceeding that any benefit to the public would result from a change from contracts to tariffs, it is clear that the Commission should, as a matter of policy, allow the currently effective contracts to continue.

2. However, if the Commission should decide that the existing contracts are not an appropriate basis for the provision of facilities to the IRCs, then, in accordance with the Commission's policy set forth All America Cables and Radio, Inc., 15 FCC 2d 1 (1968), the IRCs should be permitted to obtain indefeasible rights of user (IRUs) in the entrance facilities and intercity facilities now being provided by AT&T under contract. Because of the economic benefits of IRUs to the IRCs and to their customers and because IRUs would afford to the IRCs a greater operational role, IRUs are far preferable to tariffs as an alternative to contracts.

3. The second issue in this inquiry is whether the IRCs should be allowed to continue to require their gateway city private line customers to obtain, directly from the local telephone company, facilities between the customers' premises and the IRCs' operating offices. AT&T, in its comments herein, states that "it is unaware of any reason why the IRCs

should not be required to furnish under tariff international private line service directly to their customers' premises in gateway cities."[1] However, as pointed out in the comments of TRT Telecommunications Corp. (TRT),[2] the IRCs do not own any local distribution facilities in the gateway cities, and there are substantial practical and economic obstacles to the construction of such facilities by the IRCs. Thus, if the change suggested by the Commission were made, it would do nothing more than require the IRCs to obtain from AT&T and pass on to their customers that which the customers are now obtaining in a satisfactory manner directly from AT&T.

4. The more relevant question is whether there is any reason to require a change from contracts to tariffs for the provision of these local distribution facilities. As discussed above, there would be no advantage to such a change. In addition, the record herein is still bereft of any showing that the present arrangement is unsatisfactory. Further, it is the recently-affirmed policy of the Commission that customers be able to obtain local distribution facilities directly from AT&T.[3] For these reasons, there is no justification for the Commission to require any change in the manner

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[1] Comments of AT&T, dated June 23, 1975, at para. 3

[2] Comments of TRT, dated June 23, 1975, at p. 3.

[3] See Paragraph 27 of Memorandum Opinion and Order released May 7, 1975 in Docket No. 20099.

in which international service is provided by the IRCs to private line customers in the gateway cities.

WHEREFORE, RCA Globcom respectfully submits that the Commission should not require the IRCs to obtain entrance and intercity facilities from AT&T pursuant to tariff rather than contracts, and the Commission should not require the IRCs to offer international private line service directly to the premises of the IRCs' gateway city customer.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

s/ Francis J. DeRosa

s/ Denis J. Brion

Its Attorneys
2030 M Street, N.W.
Washington, D. C. 20036

July 8, 1975

CERTIFICATE OF SERVICE

I, Lynda Clark, hereby certify that a copy of the foregoing REPLY was served this 8th day of July, 1975 by United States mail, postage prepaid, to the following:

Harry A. Davenport, Esq.
American Telephone & Telegraph Co.
195 Broadway
New York, NY 10007

Warren Y. Zeger, Esq.
COMSAT General Corporation
950 L'Enfant Plaza, S.W.
Washington, DC 20024

Daniel J. Harrold, Esq.
Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Mr. J. A. Berenger
The French Telegraph Cable Company
25 Broad Street
New York, NY 10004

Joseph J. Jacobs, Esq.
ITT World Communications Inc.
67 Broad Street
New York, NY 10004

Roderick A. Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Ave, N.W.
Washington, DC 20006

Robert Michelson, Esq.
Western Union International, Inc.
One WUI Plaza
New York, NY 10004

s/ Lynda Clark

[illegible]

file

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Interconnection Facilities
Provided to the International
Record Carriers.

Docket No. 20452

REPLY OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) respectfully submits its Reply to Comments filed in the above-captioned proceeding by RCA Global Communications, Inc. (RCA), ITT World Communications Inc. (ITT), TRT Telecommunications Corporation (TRT) and American Telephone and Telegraph Company (AT&T).

1. It was the unanimous opinion of all carriers involved that the existing contracts for entrance and intercity facilities between the international record carriers (IRCs) and AT&T have been satisfactory to the parties and have been a significant factor in the IRCs' enviable record of providing high quality communications services at inflation-resistant rates.

2. Notwithstanding the adequacy of the subject facilities contracts, the Commission is respectfully reminded that these contracts were negotiated among the

parties to serve temporarily in lieu of a more equitable acquisition arrangement -- specifically, indefeasible right of use (IRU) interests by the IRCs in the subject facilities. As noted in several of the comments submitted in this proceeding, the Commission itself has indicated its preference that ownership of facilities be reasonably related to use.

3. Accordingly, WUI again urges the Commission to take appropriate action looking to a grant to WUI, in lieu of the subject facilities contracts, of IRU interests in the entrance and intercity facilities at issue in order to minimize operating expenses. WUI notes that its own plans involve consideration of construction of its own facilities for certain international high-density routes such as New York/Greenhill cable station or New York/Etam earth station unless relief in the form of IRUs in existing circuitry can be obtained. Shared ownership in existing facilities would conserve funds and radio frequency spectrum. Absent IRU grants, WUI has no choice but to consider construction of separate facilities -- indeed common carriers have an obligation "to be economical" in the expenditure of their funds, and thus to minimize operating expenses. The Western Union Telegraph Co., 25 FCC 535, 562 (1958).

4. As a final consideration, WUI submits that, as a practical matter, Commission review and analysis of

specific industry practices can often be expedited and clarified by means of conferences among interested parties, including Commission staff personnel. Such forums are most conducive to exploration of related problems and their potential solutions -- witness the Commission's recent commendable efforts at the successful settlement of the many difficult interconnection issues contained in Docket No. 20099. A similar, well prepared meeting, in WUI's view, would be a more appropriate vehicle for an exchange of ideas and resolution of potential industry problems or practices than the type of formalized, rigid proceeding necessitated herein by the Commission's May 7, 1975 Memorandum Opinion and Order -- an Order which hints at fait accompli and appears to relegate the interested carriers to the relatively ineffective posture of petitioning, afterwards, for reconsideration of an adverse decision. Such a procedure simply guarantees a flood of defensive, often hyperbolic pleadings rather than what is really needed -- a frank, informal, and well prepared exchange of views and information by all concerned.

5. WUI has previously called for such a meeting regarding the matters at issue herein prior to the institution of this formal docket. If the Commission still deems

some action appropriate with respect to the matters at issue an industry/FCC conference would appear to be highly beneficial.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Robert Michelson
Attorney

One WUI Plaza
New York, New York 10004

July 8, 1975

CERTIFICATE OF SERVICE

I, Mary Chin, do hereby certify that a copy of the foregoing Reply of Western Union International, Inc., has been sent by United States mail, postage prepaid to the following:

Alfred G. Walton, Esq.
American Telephone & Telegraph Co.
32 Avenue of the Americas, Room 2510
New York, New York 10013

Mr. J. A. Berenger, Manager
The French Telegraph Cable Company
25 Broad Street
New York, New York 10004

Joseph J. Jacobs, Esq.
ITT World Communications Inc.
67 Broad Street
New York, New York 10004

Francis J. De Rosa, Esq.
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

Roderick A. Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

/s/ Mary Chin

July 8, 1975

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20452 -11

List D 7-8-75

Aug-14

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Interconnection Facilities)
Provided to the International)
Record Carriers)

Docket No. 20452

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230-2

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JUL 8 - 1975
F. C. C.
OFFICE OF THE SECRETARY

REPLY COMMENTS

American Telephone and Telegraph Company (AT&T) respectfully submits the following Reply Comments in the above-entitled proceeding:

1. The international record carriers (IRCs) uniformly support the conclusion that the entrance facilities which AT&T provides to the IRCs from cable heads and earth stations to the IRCs' operating centers in gateway cities take into account the discrete needs of the IRCs and warrant a continuation of the existing contractual arrangements. As AT&T has pointed out in its Comments and in its June 26, 1974 letter* concerning the same question, the longstanding contractual arrangements between AT&T and each of the IRCs are mutually satisfactory. The IRCs' Comments confirm that fact.

2. As pointed out by Western Union International, Inc. (Comments, p. 6), if the Commission requires the use of tariffs for the provision of facilities to the IRCs, it may well have significant impact on the relationships between

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* Letter of Mr. T. H. Scandlyn to Mr. W. R. Hinchman, dated June 26, 1974.

United States carriers and foreign telecommunications entities which transit the United States if these entities are also required to obtain transiting facilities under tariff. It is not unlikely that these foreign administrations, particularly those which are members of the European Conference of Posts and Telecommunications Administrations (CEPT), might increase the charges to AT&T and other United States carriers for transiting facilities overseas. The Commission is inquiring into the arrangements between United States carriers and foreign entities in a separate proceeding (Docket No. 19031), and the Commission should not take any action in this proceeding which will cause an adverse impact on the charges paid by United States carriers for the substantial numbers of facilities they use overseas.

3. Several IRCs have suggested that if the Commission determines that the present contractual arrangements no longer serve the public interest, AT&T should make available to them indefeasible right of use (IRU) in the entrance facilities they require as an alternative to obtaining their facilities from AT&T pursuant to tariff. Such an arrangement is not at issue in this proceeding. It involves a multiplicity of complex legal and operational considerations which the parties have not had an opportunity to address herein. The Commission in this proceeding has given no indication or notice of any desire to burden its consideration of the specified issues with comments on wholly unrelated issues dealing with the wisdom

or propriety of requiring carriers to convey ownership interests in their property to others.

4. As to the second issue designated by the Commission for investigation in this proceeding, i.e., whether the IRCs should be required to offer international private line service directly to their customers' premises in gateway cities, AT&T is of the view that IRCs should have end-to-end service responsibility for their international private line customers and notes that facilities are available to the IRCs in gateway cities under Bell System local distribution facilities' tariffs between IRC operating centers and customer premises.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By
Alfred C. Partoll

By
Harry A. Davenport

195 Broadway
New York, New York 10007

By
Mary S. Lenard

32 Avenue of the Americas
New York, New York 10013

Its Attorneys

July 8, 1975

RCA Global Communications, Inc., 60 Broad Street New York, NY 10004 Telephone (212) [illegible]

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

ERCBAT

Re: Bell System Operating Companies,
Proposed Tariff F.C.C. No. 4

Charles M Lehrhaupt
General Attorney,
Regulatory Affairs

Dear Mr. Mullins:

July 12, 1977

RCA Global Communications, Inc. (RCA Glōbcom) hereby requests a one-week extension of time until July 22, 1977 in which to file a reply to the opposition of American Telephone and Telegraph Co. (AT&T) to RCA Glōbcom's petition for rejection of the above-referenced tariff.*

The requested extension is necessary because of the complexity and importance of the subject and the press of other pending regulatory matters before the Commission. This is in addition to the need to prepare for Congressional hearings during the weeks of July 11 and July 18, 1977.

Counsel for AT&T has been advised of this request and has indicated that AT&T does not object to a grant thereof.

Accordingly, RCA Glōbcom submits that good cause has been shown for an extension of time to July 22, 1977 in which to file a reply in this proceeding.

Respectfully submitted,

C M Lehrhaupt

cc:	Ruth V. Reel, Esq.)	Common Carrier Bureau
	Paul S. Darling, Esq.)	
	Gerald E. Murray, Esq.	AT&T
	John Ligon, Esq.	ITT Worldcom
	Mark N. Epstein, Esq.	WUI
	Roderick Mette, Esq.	TRT

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* We understand that the effective date of the instant tariff has been deferred by AT&T from August 25 to September 16, 197 at the request of the Bureau by letter of June 29, 1977.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

July 14, 1977

IN REPLY REFER TO:
9550

Mr. Charles M. Lehrhaupt, Esq.
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

In re: AT&T Transmittal Nos. 12758
and No. 5

Dear Mr. Lehrhaupt:

In a letter of July 12, 1977, you requested on behalf of RCA Global Communications, Inc. an extension of time until July 22, 1977 within which to file a reply to American Telephone and Telegraph Company's opposition to your rejection petition concerning the above-referenced tariff transmittals. Absent an extension of time, such reply is due on July 19, 1977.

We find that good cause has been shown for the relief requested. Accordingly, it is ordered, pursuant to Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that RCA Global Communications, Inc.'s reply is to be filed no later than July 22, 1977.

Sincerely yours,

W. R. Young
Acting Chief, Tariff Division
for Chief, Common Carrier Bureau

cc: All Parties to Docket
No. 20452

RCA Global Communications Inc | 60 Broad Street | New York, NY 10004 | Telephone (212) 363-2070

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

RCA

Re: Docket No. 20452

Dear Mr. Mullins

July 18, 1977

Francis J DeRosa
Vice President and
General Counsel

RCA Global Communications, Inc. (RCA Globcom) hereby submits its comments on the Commission's letter of June 24, 1977, which responded to a request by Western Union International, Inc. (WUI) for information pertaining to ex parte contacts between American Telephone & Telegraph Company (AT&T) and Commission personnel in connection with Docket No. 20452. The data sought and the Commission's response related specifically to that aspect of Docket No. 20452 which involved provision of so-called entrance facilities to the international record carriers under tariff rather than contract.*

Although the Commission states that it is unaware of any such ex parte contacts (other than routine inquiries on procedural matters) prior to the issuance of the Final Decision and Order in Docket No. 20452 on March 23, 1977, subsequent to the release of that Order there apparently were at least four meetings between AT&T personnel and representatives of the Common Carrier Bureau dealing with substantive issues concerning AT&T's implementation of the Order. RCA Globcom and the other international record carriers, who were the principal parties to the restricted rulemaking proceeding in Docket No. 20452 and whose interests were most directly affected by any decisions which might have been reached at these meetings, were neither informed of or invited to participate as they should have been in any of these discussions.

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* These circuits are the essential extensions or international "tail" circuits which bring the international transmission facility into the operating offices of the international carriers, including the AT&T Long Lines Department. As such, they are integral parts of circuits used for foreign or overseas communication.

It should be noted that the Commission has not provided detailed minutes of any of the subject discussions and a key two-hour meeting on March 31, attended by four members of the Common Carriers Bureau staff and four or five AT&T representatives, is summarized in two general paragraphs. Under the circumstances, it is neither possible for the international record carrier parties, whose interests are directly involved in this proceeding, nor for a potential reviewing court to ascertain to what extent the Commission's subsequent decisions on petitions for reconsideration of the Final Decision and Order filed by RCA Glōbcom and two other parties and pending pleadings addressed to the AT&T tariffs may be influenced by such ex parte contacts. We are particularly concerned by this in view of the fact the meetings in question appeared to have addressed directly factual issues regarding the Final Decision and Order which were expressly raised in the reconsideration requests and pleadings.

Furthermore, even assuming arguendo that the Commission's Order were not rescinded or modified on reconsideration, it should be noted that AT&T had various options open to it in implementing the Order* and the international record carrier parties had made a number of different proposals in this regard in their respective submissions. From the limited account of what took place at these meetings provided by the Commission, however, we have no way of telling to what extent matters of substance in which we have a direct interest may have been resolved or at least acquiesced in "off the record."

This is especially important in light of the recent decision of the District of Columbia Circuit Court of Appeals in Home Box Office, Inc. v. FCC (Case No. 75-1280, decided March 25, 1977). As stated by the Court of Appeals:

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* In denying RCA Glōbcom's request for stay of the Order, the Commission specifically stated that the Order "recognized that AT&T might provide the facilities in question to the IRCs on different terms and conditions with appropriate justification." (Order released June 9, 1977, FCC 77-361, para. 3.)

> "[I]f the Commission relied on these apparently more candid private discussions in framing the final...rules, then the elaborate public discussion in these dockets has been reduced to a sham.
>
> Even the possibility that there is here one administrative record for the public and this court and another for the Commission and those 'in the know' is intolerable."*

It is also inconsistent with the Commission's Memorandum Opinion and Order, released May 7, 1975, instituting Docket No. 20452 which expressly stated that the Commission's decisions would be based on matters "submitted for or incorporated into the record."**

We are further disturbed by the possibility that information uniquely in the possession of AT&T, which might be crucial to the international record carriers' position, may have been excluded from the record of this proceeding.*** We note, in particular, the reference to AT&T's attempted explanation, which was cut off by the Commission, of differences in cost associated with IRC entrance facilities vis-a-vis OCC entrance facilities which might justify providing the former on a different basis. (See June 24 letter from the Commission to WUI, p. 3) If such differences in fact exist, they are obviously material to any ultimate finding the Commission may make in this proceeding.

We submit that the only way matters of this kind can be finally and fairly resolved would be to hold evidentiary hearings in which all parties may fully participate and assertions of fact may be developed on the record and tested by cross-examination. Certainly, it would be improper for the Commission to impose substantial additional costs on customers for international record services, as well as to burden IRC operations with the more restrictive provisions contained in the OCC tariffs, without developing the required factual record. The Commission cannot "shut its eyes" to the facts and then pass judgment on critical issues affecting the substantial rights of the parties to this proceeding.

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* Slip Opinion, p. 89.

** 55 FCC 2d 1014, 1015.

*** We note that since the Commission did not designate Docket No. 20452 for hearing, the international record carriers did not have resort to discovery and other procedures which might have helped create the necessary record.

We submit that the data supplied in the Commission's letter of June 24, 1977 underscores the need for a deferral of this proceeding pending the further evidentiary procedures and analysis of information we have requested in our pending petition for reconsideration. This is the minimum necessary to assure that the Commission's ultimate decision is properly supported by an appropriate factual record as required by the relevant statutes and cases.*

Respectfully submitted,

Francis J.

cc: Philip V. Permut, Esq.
Acting Deputy Chief,
Common Carrier Bureau

Office of the Executive Director

All parties to Docket No. 20452

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* A one day extension of time until Monday, July 18, 1977 in which to file this pleading due to the power failure in New York City on July 13-14, 1977 was orally granted by the Commission.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
BELL SYSTEM OPERATING COMPANIES) Transmittal No. 5
)
Proposed Tariff F.C.C. No. 4,)
Overseas Connecting Facilities)
for Other Common Carriers)
)
In the Matter of)
)
AMERICAN TELEPHONE AND TELEGRAPH) Transmittal No. 12758
COMPANY, LONG LINES DEPARTMENT)
)
Proposed Revisions to Tariff)
F.C.C. No. 266, Facilities for)
Other Common Carriers)

To: Chief, Common Carrier Bureau

OPPOSITION

American Telephone and Telegraph Company ("AT&T"), for and on behalf of itself and the Bell System Operating Companies issuing Tariff F.C.C. No. 4, pursuant to Section 1.45 of the Commission's Rules, hereby opposes the Petitions for Rejection, dated July 6, 1977, of Western Union International, Inc. ("WUI") and TRT Telecommunications Corp. ("TRT"). In support whereof, it is respectfully stated as follows:

1. On May 27, 1977 AT&T filed a new tariff with the Commission, Tariff F.C.C. No. 4, with an effective date of August 25, 1977. In addition, it filed related revisions to tariffs on file with the Commission offering

facilities to Other Common Carriers.* WUI and TRT have petitioned the Commission to reject the tariff filings in question.**

2. The tariff filings in question were made in compliance with the directions of the Commission in its Final Decision and Order, released March 23, 1977, in Docket No. 20452 (FCC 77-176). In further compliance with the order, notices of termination of existing written agreements for providing facilities by various Bell System Companies to International Record Carriers were sent to the latter carriers. The terminations are to become effective, pursuant to the terms of those agreements, after the passage of specified periods of time, e.g., 90 days in the case of lease agreements between AT&T's Long Lines Department and International Record Carriers. In the notices of termination, the carriers were informed that the facilities furnished under the agreements would be available under Other Common Carrier tariffs on file with the Commission, e.g., AT&T Tariff F.C.C. No. 266, and under the tariff filings in question.

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* Tariff F.C.C. No. [illegible] was issued by American Telephone and Telegraph Company, Long Lines Department, New Jersey Bell Telephone Company, The Pacific Telephone and Telegraph Company and Southern Bell Telephone Company.

** TRT has limited its request to the tariff revisions filed with Transmittal No. 5, i.e., Tariff F.C.C. No. 4. WUI has also sought suspension in a separate petition. A reply to that petition is being filed at the same time as this Opposition. RCA Global Communications, Inc. and ITT World Communications filed petitions to suspend and reject, dated June 21, 1977, each of which was responded to by AT&T on July 5, 1977.

3. There is no dispute that the Commission has ordered that facilities be furnished in the future to International Record Carriers at the same rates as comparable facilities are furnished to Other Common Carriers.* The tariff filings, when they become effective, along with the agreement termination actions described above, will accomplish this result while taking account of differences in the manner in which facilities are furnished for overseas communications. The Bell System Operating Companies see no basis for rejecting the tariffs. They were filed pursuant to and in compliance with Commission orders and raise no issue of law with respect to which the Commission may exercise its rejection powers.** Similarly, there is no basis for investigation or suspension.

4. There is an additional reason why the relief requested should not be granted under present circumstances. The background of the tariff filings in question includes, most importantly, the Commission's action in its Memorandum Opinion and Order in Docket No. 20099 (FCC 75-450), 52 F.C.C.2d 727 (1975). The Commission terminated that proceeding on the basis of an agreement, commonly referred to as the "Settlement Agreement," between and among the parties to that proceeding.

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* See Final Decision and Order in Docket No. 20452, paras. 13 and 17.

** See In the Matter of AT&T, Termination of Telpak Service, Memorandum Opinion and Order, released June 13, 1977 (FCC 77-384), paras. 11 and 23.

The International Record Carriers, including WUI but not TRT, were parties to that agreement. A most significant aspect of the Settlement Agreement related to rates to be charged for facilities furnished by Bell System Companies to Other Common Carriers including, of course, the other parties to the Settlement Agreement. The rates to be applied as a result of the actions taken by the Bell System Operating Companies in response to the Commission's directions in Docket No. 20452, including the rates for "overseas connecting facilities" under Tariff F.C.C. No. 4, are the same as the rates contemplated by the Settlement Agreement. Insofar as WUI and TRT take issue with rates to be charged under the tariffs in question, they are taking issue with rates which the Commission accepted as an interim settlement of the proceedings in Docket No. 20099 subject to certain reservations relating to International Record Carriers which have since been resolved by the Commission in Docket No. 20452.

5. In its order terminating Docket No. 20099, the Commission provided for the commencement of a proceeding to investigate questions not disposed of in Docket No. 20099 relating to facilities provided to International Record Carriers. It instituted Docket No. 20452 for this purpose. The Commission noted that AT&T furnished facilities between gateway offices and earth station/cable head locations (entrance facilities) and between gateway offices (inter-gateway facilities) to International Record Carriers pursuant to contract, whereas similar facilities were provided to

Other Common Carriers pursuant to tariff (e.g., AT&T Tariff F.C.C. No. 266; Pacific Telephone and Telegraph Company Tariff F.C.C. No. 126). The Commission asked whether it should require AT&T to provide facilities to the International Record Carriers pursuant to tariff rather than under contract.*

6. On the basis of the written pleadings of the parties to Docket No. 20452, including pleadings of AT&T and each of the petitioners herein, the Final Decision and Order of the Commission was issued and the proceeding was terminated.** The Commission held that AT&T was "required to provide intercity and entrance facilities to the IRCs on the same terms and conditions as it offers those facilities to the SCCs and DSCCs" (para. 25) and directed the Bell System Companies to eliminate any discrimination in furnishing such facilities to Other Common Carriers and International Record Carriers. The Commission stated that it would waive the requirements of its rules relating to cost justification if, in compliance with its directions, tariffs were filed which offered facilities to International Record Carriers under the same terms and conditions as applicable to comparable facilities offered to Other Common Carriers.***

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* In the Matter of Interconnection Facilities Provided to International Record Carriers, Memorandum Opinion and Order, released May 7, 1975, Docket 20452 (FCC 75-451), paras. 1 and 3.

** The International Record Carriers have requested reconsideration by the Commission of the Final Decision and Order in that separate proceeding. Those petitions are pending.

***A waiver of cost justification is entirely appropriate under the circumstances because Other Common Carriers are furnished facilities at rates which are not cost-justified in accordance with Section 61.38 of the Rules. Rather, the rates are a result of the negotiations conducted under Commission auspices in Docket 20099 during which the parties settled their differences on an interim basis and entered into the Settlement Agreement which was accepted by the Commission.

7. Pursuant to the Commission's final order in Docket 20452, the Bell System Operating Companies on May 27, 1977 filed Tariff F.C.C. No. 4 which offers overseas connecting facilities to the International Record Carriers and incorporates by reference rates for comparable facilities offered in Other Common Carrier tariffs filed with the Commission. No supporting cost data was filed in view of the Commission's waiver of Section 61.38 of the Rules and of the prohibitions against incorporation by reference. (See Special Permission Order No. 8372.) The result of the Commission's action and complying tariff revisions is the integration of the conclusion of Docket No. 20099 with the conclusion of the separate Commission consideration of the International Record Carrier questions in Docket No. 20452. International Record Carriers are to be in the same relative rate position as all Other Common Carriers vis-a-vis the Bell System by virtue of the tariff filings in question. At the same time those filings preserve the particular manner in which overseas connecting facilities are furnished, thereby avoiding unwarranted and unnecessary burdens to insure the continued availability of high quality communications to the public.*

8. The Commission recently summarized the grounds on which it may, under law, reject tariff filings as follows:

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* See Transmittal No. 5, May 26, 1977, a copy of which is attached hereto, for a concise review of the considerations which led to this result.

> "The grounds upon which we may reject and return tariff filings are (1) failure to publish an effective date, as required by the Communications Act, 47 U.S.C. §203, and our rules; (2) lack of any requisite Commission-granted authority to provide the service offered by the tariff, such as Section 214 authorization, 47 U.S.C. §214; and (3) any other _prima facie_ unlawfulness such as demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. _United Video, Inc._, 49 F.C.C. 2d 878 (1974); _see also_, _Municipal Light Boards_ v. _FPC_, 450 F. 2d 1341 (D.C. Cir. 1971), _Associated Press_ v. _FCC_, 448 F. 2d 1095 (D.C. Cir. 1971). . . ." _In the Matter of AT&T, Long Lines Department, Termination of Telpak Service_ (FCC 77-384), released June 13, 1977, para. 11.

None of these grounds exist in the circumstances before the Commission on the tariff filings in question. The tariffs were filed on 90 days' notice, with an effective date in compliance with a Commission order and pursuant to appropriate waivers; the Bell System Companies involved have the authority -- indeed are under Commission direction -- to make the offerings; and petitioners have raised no issued suggesting _prima facie_ unlawfulness of the tariff filings.* Accordingly, as developed in detail herein, there is no basis for the relief requested.

THE ARGUMENTS OF THE PETITIONERS DO NOT WARRANT REJECTION OF THE TARIFF FILINGS

The Rate Treatment is Appropriate

9. The International Record Carriers' arguments ignore the fact that the Commission may exercise the

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* WUI raises an ancillary question relating to discussions between AT&T representatives and Commission Staff representatives which occurred after the Final Decision and Order in Docket 20452 was released and before the tariff filings, which are the subject of this proceeding, were made. This question is addressed _infra_, at para. 15 _et seq_.

extraordinary remedy of rejection on very limited bases. In addition, it should be kept uppermost in mind that the advent of tariffs governing the relationship of the Bell System companies and International Record Carriers in place of agreements will not be accompanied by significant changes in the manner of furnishing facilities. Although increased rates, at the same level as applicable to the other Other Common Carriers who were parties to the Settlement Agreement in Docket No. 20099 will result, no facility offerings are to be eliminated.

10. In brief, Tariff F.C.C. No. 4 offers facilities to Other Common Carriers authorized to provide overseas services -- denominated "overseas connecting facilities" -- which are the entrance-type facilities now furnished under agreements with International Record Carriers. No essential change in the manner in which such facilities are furnished between International Record Carriers' operating centers and jointly used cableheads and earth stations is intended. The only significant change to be visited upon International Record Carriers will be in the rates to be paid for such facilities.* The lower existing rates will be replaced upon termination of the agreements with higher Other Common Carrier rates. In addition, with termination of the agreements, existing rates for Other Common Carrier facilities will apply between International Record Carrier

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* As the Commission pointed out in the Final Decision and Order in Docket No. 20452 at para. 14, n., if as a result of paying these increased rates a carrier's revenue requirements become such that an increase in revenues is appropriate, it is open to the International Record Carriers to seek adjustment in their rates by filing revisions to their tariffs.

locations, e.g., operating centers in different gateway cities. These latter rates are presently in existence in tariffs on file with the Commission and no Commission action is called for. They are the same rates as those referred to in the Settlement Agreement.

11. As stated above, the International Record Carriers will in the future be offered facilities at the same rate levels as all Other Common Carriers for comparable facilities. Existing differences in interim rates between state-by-state Other Common Carrier rates found in the various Other Common Carrier facility tariffs, e.g., The Pacific Telephone Tariff F.C.C. No. 126, and nationwide Other Common Carrier rates found in Tariff F.C.C. No. 266, complained of at Page 9 of WUI's Petition, flow from differences in the underlying basis for each. These differences were recognized and have existed since the negotiation of the Settlement Agreement. Tariff F.C.C. No. 266 rates are the same as rates set forth in Tariff F.C.C. No. 260 since each relates to offerings which cross state lines. Since state-by-state Other Common Carrier offerings relate to facilities which do not cross state lines,* the various Other Common Carrier facility rates were set at levels equal to each state's private line rates, with substantial discounts

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* For some reason WUI seems to refer to rates for these facilities as "intrastate" rates even though they are found in tariffs on file with the Commission. See WUI Petition for Rejection, paras. 15 and 16. WUI further confuses the issue by referring to Tariff F.C.C. No. 3 (Petition, para. 17) and doing so erroneously. Tariff F.C.C. No. 3, which offers circuits to patrons of International Record Carriers at rates which are at the same levels as rates in the Other Common Carrier facility tariffs, is not at issue here.

for intraexchange and interexchange facilities up to 40 miles. All Other Common Carriers enjoy the same benefits from this arrangement.

12. TRT argues that rates to be applied to entrance-type facilities, i.e., Tariff F.C.C. No. 4 rates, are unjustified because, it speculates, the costs involved are lower for International Record Carriers than for Other Common Carriers (TRT Petition, para. 3). But, the rates in question here are the result of the Settlement Agreement and are to continue under the terms of that agreement on an interim basis until rates cost-justified pursuant to Section 61.38 of the Rules for facilities for Other Common Carriers become effective. In other words, the rates in question have not been the subject of cost-justification support as yet and all who are furnished facilities thereunder are similarly situated. The Bell System Companies have advised the Commission pursuant to its direction that they will file such rates before December 1, 1978.

13. WUI attempts to inject into this proceeding an issue which is completely foreign, i.e., the provision of transiting facilities to telecommunications entities of foreign administrations. There is a serious question whether the Commission would have a basis for exercising jurisdiction with respect to such facilities over which communications are carried which neither originate or terminate in this country. But in any event, if WUI's argument has any merit,

it would result in higher rates to foreign administrations to cure the purported discrimination, not lower rates to WUI. AT&T submits, however, that the issue of transiting facilities provided to foreign administrations is not properly a part of this proceeding and need not be addressed to dispose of petitioners' attacks on the tariff filings at issue here.*

14. WUI correctly points out that at a meeting on June 28, 1977, during a discussion of procedures to be applicable in the future, a few situations emerged which will be the subject of tariff revisions in the near future. None was of major significance or sufficiently important to warrant rejection of tariff filings in question.

Pre-Tariff Filing Discussions with Staff were Appropriate

15. WUI urges that the tariff filings in question be rejected on the ground that representatives of AT&T discussed the proposed tariff filings with representatives of the staff of the Common Carrier Bureau before the tariff filings in question were made. WUI is confused, both as to the law and

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* Such transiting facilities are involved in separate proceedings. See F.C.C. Docket Nos. 20778 and 19031.

the nature of these proceedings.* It argues that Docket No. 20452 is a restricted rule making proceeding and thus, the discussions were in violation of the Commission's *ex parte* rules. But that docket, subject of course to the statutory rights of reconsideration and judicial review, was terminated by the Commission's Final Decision and Order, released March 23, 1977. Each of the meetings cited by WUI --which were held at the request of AT&T representatives-- dealt not with the Commission's determination in Docket 20452, but rather with insuring adequate understanding of and compliance with the action directed by the Commission in that Final Decision and Order, *viz*., the elimination of discrimination in the future by the filing of tariffs or contracts to comply with Commission's directions. Neither the merits or the outcome of Docket No. 20452, nor the substantive and procedural issues involved therein were, directly or indirectly, the subject of the meetings.

16. The remedy of rejection requested by WUI is unavailable under the circumstances. WUI is incorrect in its contention that the mere existence of these discussions--without any showing of prejudice--taints this proceeding so as to warrant rejection of the tariffs *vel non*.

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* In fact, WUI's confusion extends to mislabeling of the caption in this tariff proceeding, by inserting a gratuitous reference to Docket No. 20452. Compare the petitions filed herein by ITT Worldcom, RCA Globcom, and TRT Telecommunications.

WUI was furnished a detailed summary of the substance of those discussions on June 24, 1977 (copy attached), well before filing its Petition for Rejection. Yet, WUI cites no impropriety in the discussions; nor does it in fact, comment substantively on any statements made in those discussions. Rather, in an implicit recognition of its weakness, WUI chooses to rest its impoverished position on the sheer speculation that "there were no written records concerning those meetings" and "therefore, it is probable that the material" is incomplete or omits meetings.* The contrary is significantly more likekly on the basis of the comprehensive report of the discussions submitted to WUI by the Deputy Chief of the Common Carrier Bureau.

17. Aside from WUI's bald and decisionally irrelevant speculation, the discussions that in fact did occur provide no basis for rejection of these tariffs. Those discussions involved specific problems arising in preparing tariffs to comply with a Commission Order, and occurred prior to filing the tariffs or pleadings relating thereto and, obviously, prior to the institution of any proceeding addressing the merits of the tariffs. Such pre-filing discussions between the staff and the carrier involved are permissible and indeed essential to the effective discharge of the Commission's obligations with respect to complex tariff filings.

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* Petition for Rejection, para. 12.

and even WUI recognizes their propriety.* Those discussions provide no basis whatever for rejection of the tariffs, for at least three reasons. First, the discussions did not take place during a restricted proceeding and are therefore not governed by the Commission's ex parte rules; second, even assuming a restricted proceeding was pending, the discussions did not relate to the merits or outcome of that proceeding; and third, in any event, rejection or suspension is a totally improper remedy and would not be warranted on the basis of the substance of the discussions even if it were an available remedy.

18. First, the Commission's ex parte rules are applicable only to "restricted" proceedings. Tariff proceedings are rulemaking proceedings, which are restricted under the Commission's Rules only from "the day they are instituted."** Likewise, the decision in Home Box Office, Inc. v. FCC,*** relied on by WUI, applied only to pending proceedings. No proceeding whatever had been instituted regarding the tariff filing which was the subject of the AT&T/Staff discussions--indeed, no tariff had been prepared. Thus, the ex parte rules are not even applicable, n[illegible] violated.

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* See Petition for Rejection, para. 4.

** FCC Rules and Regulations §1.1207.

*** Case No. 75-1280, D.C. Cir. (March 25, 1977). That Court has recently made clear that the decision in Home Box Office, if viable, applies only to instances involving "competing claims to a valuable privilege." Action for Children's Television v. FCC, Case No. 74-2006 (D.C. Cir. July 1, 1977), at pp. 36-37. Such claims are not in issue in this case, and Home Box Office is therefore not applicable.

19. WUI is of course cognizant of this decisive defect in its position, and therefore seeks to wedge this tariff filing into the Docket No. 20452 proceedings. WUI misapprehends both the nature of Docket No. 20452 and the instant tariff filings. The Commission's Order of May 7, 1975 instituting Docket No. 20452 clearly stated the two specific issues to be investigated: first, whether the Commission should require the IRCs to obtain entrance and intercity facilities from AT&T pursuant to tariff rather than contract; and second, whether the IRCs should be required to offer service directly to the premises of their gateway city customers. The Commission's Final Decision and Order, released March 23, 1977, fully resolved these specific issues. The Commission's Order did not prescribe filing of tariffs but simply ordered AT&T to "remove the unlawful discrimination" found by the Commission within 30 days after publication of the Final Decision and Order in the Federal Register. Having decided the basic policy issues it had docketed for investigation and directed in a general fashion compliance with the decision, Docket No. 20452 was complete. The Commission therefore ordered "that this proceeding IS TERMINATED."* In terminating Docket No. 20452, the Commission was of course fully aware that AT&T would be required to subsequently file new tariffs or contracts to comply with the final decision, as is frequently the case when the Commission decides issues of basic

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* Id., para. 28 (emphasis added).

policy. However, the Commission nevertheless terminated the proceeding and it is evident that any subsequent proceedings involving AT&T's filing would be new proceedings narrowly focusing on the particulars of the filing itself and not on the basic policy decision which had already been made. Accordingly, the discussions were outside any pending proceeding and the FCC's ex parte rules do not apply.

20. Second, AT&T's discussions with the staff were not, in any event, communications prohibited by the Commission's ex parte rules. Only "presentations," defined as "any communication going to the merits or outcome of any aspect of a restricted proceeding," are prohibited by the ex parte rules.* Here, assuming arguendo the post-decision tariff filing can be construed as part of Docket No. 20452, neither the "merits" nor the "outcome" of that docket was discussed. Indeed, the raison d'etre of the discussions was the underlying assumption that the merits and outcome of Docket No. 20452, requiring the filing of new tariffs or contracts, was final and that AT&T shortly would have to file appropriate documents to comply with the order. The discussions concerned the details and mechanics of compliance with a final decision and not the merits or the outcome of that decision.

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* FCC Rules and Regulations § 1.1201(f).

21. Third, rejection is a totally inappropriate remedy even if WUI's argument is presumed to be correct. WUI has cited no impropriety or prejudice in the discussions which actually took place. Moreover, having been promptly provided a detailed summary of the discussions by the Common Carrier Bureau as a result of its Freedom of Information Act request, WUI in fact has had ample opportunity to provide the Commission with the "full argument" WUI complains is lacking. Rather than do so, WUI relies wholly on speculation that the summaries are inaccurate or incomplete. Thus, although WUI asserts that the Home Box Office case supports its position, here WUI has had precisely the opportunity the Court in that case found lacking--a statement of the discussions and an opportunity to comment under these circumstances the relief requested is wholly unwarranted even if the nature of the discussions was other than the details and mechanics of compliance as shown by the Deputy Chief's letter of June 24, 1977. As the Court of Appeals for the District of Columbia Circuit recently observed, "ex parte contacts do not per se vitiate agency informal rulemaking action, but only do so if it appears from the administrative record under review that they may have materially influenced the action ultimately taken."* The facts belie any such inference and indeed WUI does not and cannot allege otherwise.

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* Action for Children's Television v. FCC, Case No. 74-2006 (D.C. Cir., July 1, 1977), at p. 36. In connection with WUI's assertion that the CCB's statement is inaccurate or incomplete, the Court further suggested that such bald allegations do not warrant administration of "a lie-detector test." See ibid.

CONCLUSION

20. None of the allegations made by the petitioners warrant or require the exercise of the extraordinary power of rejection. Indeed, as shown herein, there is no merit to their allegations. The Bell System has filed tariffs which comply with the Commission's directions and the Bell System Companies have taken appropriate action to terminate agreements, the result of which is to put International Record Carriers basically in the same position as all Other Common Carriers with respect to rates to be paid and with respect to all other terms and conditions except where a different manner of providing facilities for overseas communications calls for differing treatment. In so doing the Bell System believes that it has complied with the directions of the Commission and has fulfilled its responsibilities to the Commission as it presently understands them.

WHEREFORE, AT&T respectfully submits that the Petitions for Rejection should be denied in all respects.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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Alfred C. Partoll

By /s/Gerald E. Murray
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Its Attorneys

July 18, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of BELL SYSTEM OPERATING COMPANIES Proposed Tariff F.C.C. No. 4 Overseas Connecting Facilities for Other Common Carriers	Transmittal No. 5
In the Matter of AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT Proposed Revisions to Tariff F.C.C. No. 266, Facilities for Other Common Carriers	Transmittal No. 12758

REPLY
(To be acted on by the Commission)

American Telephone and Telegraph Company ("AT&T"), for and on behalf of itself and the Bell System Operating Companies issuing Tariff F.C.C. No. 4, pursuant to Section 1.773(c) of the Commission's Rules, hereby replies to the Petition for Suspension, dated July 6, 1977, of Western Union International, Inc. ("WUI"). In support whereof, it is respectfully stated as follows:

1. On May 27, 1977 AT&T filed a new tariff with the Commission, Tariff F.C.C. No. 4, with an effective date of August 25, 1977. In addition, it filed related revisions to tariffs on file with the Commission offering facilities to Other Common Carriers.* WUI has petitioned

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* Tariff F.C.C. No. 4 was issued by American Telephone and Telegraph Company, Long Lines Department, New Jersey Bell Telephone Company, The Pacific Telephone and Telegraph Company and Southern Bell Telephone Company.

the Commission to suspend the tariff filings in question and set them for investigation. WUI and TRT Telecommunications, Inc. have sought rejection in separate petitions. An opposition to those petitions is being filed at the same time as this Reply. In petitions, dated June 21, 1977, RCA Global Communications, Inc. and ITT World Communications, Inc. have sought rejection and suspension to the tariff filings. AT&T responded to those petitions on July 5, 1977.

2. WUI's Petition for Suspension and Investigation relies on the same arguments set forth in its Petition for Rejection and on the arguments advanced by RCA Global Communications, Inc. and ITT World Communications, Inc. All of these arguments have been met in AT&T's Opposition to WUI's Petition for Rejection, filed concurrently, and in AT&T's earlier pleadings in response to RCA Globcom's and ITT's petition. To avoid undue repetition and the further burdening of the Commission, we respectfully request that AT&T's earlier responses herein, dated July 5, 1977, and the Opposition, dated July 18, 1977, be considered in connection with WUI's Petition for Suspension and Investigation.

CONCLUSION

3. The Bell System has filed tariffs which comply with the Commission's directions and the Bell System Companies have taken appropriate action to terminate agreements, the result of which is to put International Record Carriers

basically in the same position as all Other Common Carriers with respect to rates to be paid and with respect to all other terms and conditions except where a different manner of providing facilities for overseas communications calls for differing treatment. In so doing the Bell System believes that it has complied with the directions of the Commission and has fulfilled its responsibilities to the Commission as it presently understands them.

WHEREFORE, AT&T respectfully submits that WUI's Petition for Suspension and Investigation should be denied in all respects.

Respectfully submitted,

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July 18, 1977

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WHEREFORE, AT&T respectfully submits that WUI's Petition for Suspension and Investigation should be denied in all respects.

Respectfully submitted,

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July 18, 1977

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply of American Telephone and Telegraph Company in Transmittal Nos. 5 and 12758 were served this 18th day of July, 1977, by mailing copies thereof by United States mail, postage prepaid, to the following persons at the addresses shown below:

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)

AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY, LONG)
LINES DEPARTMENT) Transmittal No. 12758

Proposed Revisions to Tariff)
F.C.C. No. 266, Facilities for)
Other Common Carriers)

and)

AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY, LONG)
LINES DEPARTMENT, NEW JERSEY)
BELL TELEPHONE COMPANY, PACIFIC)
TELEPHONE AND TELEGRAPH COMPANY)
and SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY) Transmittal No. 5

Proposed Bell System Operating Companies)
Tariff F.C.C. No. 4, Overseas Connecting)
Facilties for Other Common Carriers.)

To: Common Carrier Bureau

REPLY

ITT World Communications Inc. (ITT Worldcom) pursuant to Section 1.45 of the Commission's Rules and Regulations, hereby submits its Reply to the Opposition of American Telephone and Telegraph Company (AT&T) 1/

1/ AT&T. Opposition, dated July 5, 1977 which was submitted for and on behalf of AT&T and the Bell System Operating Companies issuing proposed Tariff F.C.C. No. 4.

in the above-captioned matters. In support of this Reply, ITT Worldcom respectfully states:

Introduction

On July 21, 1977 ITT Worldcom filed a Petition for Rejection of the instant tariff proposals of AT&T stating that the International Record Carriers (IRCs) should be accorded the opportunity to purchase indefeasible rights of use (IRUs) in the entrance and intercity facilities in question, that AT&T's proposals conflict with the Commission's Rules and Regulations and its Final Decision and Order (Final Decision) in Docket No. 20452[2] and, that acceptance of AT&T's filing prior to Commission action of ITT Worldcom's Petition for Reconsideration[3] of the Final Decision would constitute a denial of procedural due process.

More specifically, ITT Worldcom cited the favorable policy of the Commission regarding the purchase of IRUs for the provision of international services and the Commission's recognition that IRUs represent "the most efficient and economical means" by which IRCs can furnish service to the public. And it demonstrated that the subject facilities are mere extensions of overseas facilities to which the IRU concept would be particularly applicable since the latter facilities are already acquired by IRUs. With this in mind and in view of the substantial increase in costs posed by the instant tariff filings, it was requested that this question be resolved prior to acceptance of AT&T's proposals.

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[2] FCC 77-179, released March 23, 1977.

[3] ITT Worldcom, Petition of Reconsideration, dated April 25, 1977.

Additionally, as ITT Worldcom demonstrated and AT&T has admitted,[4/] the instant tariff proposals do not meet the criteria and the precondition of the Final Decision for waiver of the supportive cost material and other data required by Section 61.38 of the Commission's Rules and Regulations -- the provision of "identical" facilities to the IRCs and Other Common Carriers (OCCs). And without the required cost support material, the instant tariff proposals must be rejected.

It has also been established that the proposals conflict with the Commission's Rules and Regulations by the improper cross-referencing of rates which require scrutiny of at least three separate and distinct tariffs, in addition to the applicable Bell System Operating Company tariff, in order to make a rate determination. Indeed, one of the Tariffs -- Tariff F.C.C. No. 260 -- is itself the subject of an on-going investigation in Docket No. 20814 and the entire submission raises questions of possible inter-service subsidies in the absence of the mandated datum required by the Commission's decision in Docket No. 18128.[5/]

[4/] See eg., AT&T, Petition for Clarification, dated April 25, 1977 and Transmittal No. 5, dated May 26, 1977.

[5/] 61 F.C.C. 2d 587 (1976).

Finally, it was pointed out that implementation of the instant tariff proposals prior to action on ITT Worldcom's pending Petition for Reconsideration would effectively deprive ITT Worldcom of its rights of procedural due process.

In the circumstances, it was requested that the Commission reject AT&T's tariff proposals.

AT&T, on the other hand, has sought to elide these basic issues by arguing that the question of IRUs is collateral to the issue of rejection and that the tariff proposals merely represent a codification of the interim Settlement Agreement which was accepted but not approved by the Commission in Docket No. 20099.[6] AT&T's Opposition completely fails to address the patent conflict with the Final Decision and the Commission's Rules and Regulations as shown on the face of its tariff proposals.

Without more, ITT Worldcom submits that the proposed revisions to AT&T's Tariff F.C.C. No. 266 and the proposed Bell System Operating Companies Tariff F.C.C. No. 4 must be rejected.[7] Even assuming, arguendo, that these fundamental legal obstacles were not present, as a matter of fundamental fairness, the subject tariff proposals should not be implemented prior to Commission action on ITT Worldcom's Petition for Reconsideration and a decision by the Commission with respect to its request for IRU interests in the facilities in question.

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[6] See 52 F.C.C. 2d 727 (1975).

[7] In the Matter of United Video, Inc., 49 F.C.C. 2d 878 (1974); In the Matter of American Telephone and Telegraph Company, 46 F.C.C. 2d 13 (1974); Tariffs-Evidence, 40 F.C.C. 2d 149 (1973); Associated Press v. F.C.C., 448 F. 2d 1095 (D.C. Cir 1971).

The Question Of IRU Interests In Entrance and Intercity Facilities Is Material and Relevant To The Issues At Hand

Although whether the subject facilities should be offered pursuant to tariff or contract was an issue in Docket No. 20452, the Commission, in ordering AT&T "to eliminate the inequitable and unlawfully discriminatory treatment of COMSAT General, DSCCs and SCCs vis-a-vis the IRCs",[8] merely stated that the filing of tariff schedules was "the most desirable means" of insuring non-discrimination among carriers.[9] It did not require such filing. This is clearly indicated by the filing date requirement imposed by the Commission "*[i]f* this method is chosen".[10] An ordering paragraph of the Final Decision restates this concept.[11]

ITT Worldcom has shown that the facilities in question are natural extensions of overseas facilities. Recognizing that IRUs offer the most efficient alternative to providing needed facilities at the least cost, it would be unreasonable to require both the carriers and the public to assume the burden of less efficient and more costly tariff schedules as proposed by AT&T while at the same time realizing the beneficial aspects of IRUs for the overseas portion of the same service. The public interest requires the opportunity to [illegible] consider this question. And this should be done prior to the implementation of the instant tariff proposals.

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[8] *Final Decision*, note 2 *supra*, at para. 17, p. 10.

[9] *Id.*

[10] *Id.* (Emphasis supplied).

[11] *Id.* at para. 25, p. 13.

AT&T summarily concludes that "RCA Globcom and ITT should not be heard to raise this completely collateral issue in the course of complaining of rates..."[12/] However, more than rates are involved. As shown by the petitions for reconsideration of the *Final Decision*, the petitions for rejection and suspension of the subject tariff filings and the numerous pleadings submitted in response to the *Final Decision*,[13/] the instant tariff proposals will create a substantial restructuring of the IRCs' services. Rates, albeit a major part of that restructuring, are only one issue to be considered with regard to this proceeding.

AT&T also states that the question of IRUs was not at issue in Docket No. 20452 and "[i]n view of the different considerations applicable to the consideration and operation of facilities and the provision of service to the public in international and domestic areas, AT&T submits that the request has no merit".[14/] Indeed, it is exactly these types of considerations which have previously led the Commission to recognize and applaud the purchase of IRUs by IRCs in the provision of their regularly authorized services.

Accordingly, ITT Worldcom submits that the public interest requires resolution of this question before the issue becomes blurred, if not mooted, by the implementation of the instant tariff proposals.

[12/] AT&T, note 1 *supra*, at para. 19, p. 14.

[13/] See ITT Worldcom, Petition for Rejection, p. 6, n. 9, 10 and 11, dated June 21, 1977.

The Failure To Adequately And Properly Justify The Instant Tariff Proposals Is Sufficient Cause For Their Rejection

The *Final Decision* explicitly required the submission of cost support material and other data.

> ...if the *rates and conditions* vary from those included in tariffs offering similar facilities to COMSAT General, SCCs and DSCCs, we expect such differences to be fully justified with Section 61.38 and other data. [15]

As amptly demonstrated by ITT Worldcom's Petition for Rejection, AT&T cannot and does not propose to offer entrance and intercity facilities to the IRCs and the OCCs on identical terms and conditions. Thus, AT&T continues to recognize the "differences in the manner in which facilities are furnished for overseas communications"[16] and its effort to preserve "the particular manner in which overseas connecting facilities are furnished...[17]

However, AT&T has its own "heads we win tails you lose" interpretation of the *Final Decision*. AT&T apparently contends that where facilities are provided to the IRCs and the OCCs under similar conditions the cost support requirement of the *Final Decision* is inapplicable. And where the provision of such facilities is not conducted in a "similar manner" the *Final Decision* itself is in applicable. For instance, in referring to the provision of facilities for television services, AT&T states:

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[15] *Final Decision*, note 2 *supra*, at p. 10, n. 8 (Emphasis supplied).

[16] AT&T, note 1 *supra*, at para. 3, p. 3.

[17] *Id*. at para. 7, p. 6. See also , *id*. at para. 19, p. 14 and para. 20, p. 15.

> ...AT&T in its Petition for Clarification pointed out on April 25, 1977 that the March 23, 1977 order may be read as inapplicable to the provision of intercity television transmission facilities... Accordingly, AT&T proposed to continue present arrangements except with respect to the local channel facilities involved until such time as the Commission ruled [sic] otherwise.[18]

Thus, AT&T has completely absolved itself from compliance with Section 61.38 of the Commission's Rules and Regulations by not submitting cost support material and other data. The most dangerous aspect of this regulatory slight of hand is that the question of whether facilities are provided in a similar manner is subject to AT&T's unfettered discretion. And once AT&T according to its theory has determined that particular facilities are similarly provided, it merely need apply the rates contained in interim Settlement Agreement in order to comply with the *Final Decision*.[19] Consequently, "except where a different manner of providing facilities for overseas communications calls for differing treatment",[20] AT&T has attempted to implement rates which have not been approved by the Commission and which have not been cost justified.[21]

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[18] *Id.* at para. 16, pp. 12-13.

[19] See eg., *id.* at para. 4, p. 4.

[20] *Id.* at para. 20, p. 15.

[21] This, of course, does not take into account the unresolved investigation of these rates in Docket No. 20814.

It is submitted that this self-serving reasoning cannot withstand scrutiny. The Commission's mandate to AT&T is clear. Where facilities supplied to the OCCs and IRCs are not "essentially identical",[22] any differences in rates and conditions must be fully justified. AT&T, by its own admission, states that the terms and conditions contained in its tariff proposals are identical to the terms and conditions for OCCs "except where a different manner of providing facilities" requires "different treatment". It is exactly this different treatment which, in compliance with the Final Decision, must be cost justified. Absent proper and adequate cost justification for each and every difference regarding the terms and conditions of providing facilities to the IRCs and OCCs, it is incumbent upon the Chief, Common Carrier Bureau to reject the instant tariff proposals.[23]

22/ See Final Decision, note 2 supra, at para. 14, p. 7.

23/ See note 7 supra.

AT&T's Opposition has completely failed to refute the bases for rejection--conflict with the Commission's Rules, Regulations and Orders--outlined in ITT Worldcom's Petition. The undisputed cross-referencing of rates by AT&T which unduly complicates the subject tariff revisions is by itself a sufficient legal basis for rejection. In addition, however, AT&T has failed to provide the cost justification material required by Section 61.38 of the Commission's Rules and Regulations. AT&T's Opposition has failed to disprove ITT Worldcom's contention that the waiver of Section 61.38 provided by the Final Decision if AT&T furnished "identical facilities" to the IRCs and OCCs is inapplicable. And ITT Worldcom has refuted herein AT&T's efforts, by means of a self-serving interpretation of the Final Decision, to bring itself within the scope of this waiver.

In view of the foregoing, the subject tariff revisions should be summarily rejected. Subsequent to such rejection it is ITT Worldcom's hope that the Commission will act promptly on its pending Petition for Rejection. ITT Worldcom believes that the public interest requires an expedited evidentiary hearing as soon as practicable to determine whether in fact the facilities provided to the IRCs and OCCs are for like services under like circumstances, whether any discrimination which may exist between the rates presently accorded the IRCs by contract and the rates accorded the OCCs by tariff are just and reasonable and whether AT&T should be required to accord IRCs IRU interests in the facilities in question.

Respectfully submitted,

ITT WORLD COMMUNICATIONS INC.

By

Joseph J. Jacobs

Randall B. Lowe

Its Attorneys
67 Broad Street
New York, New York

Dated: July 19, 1977

CERTIFICATE OF SERVICE

I, Valerie Carrasco, certify that I have this 19th day of July, 1977 sent a copy of the foregoing "Reply" by United States mail, first class postage prepaid, to the following:

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Valerie Carrasco
Valerie Carrasco

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT Proposed Revisions to Tariff F.C.C. No. 266, Facilities for Other Common Carriers	)	Transmittal No. 12758
and AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT, NEW JERSEY BELL TELEPHONE COMPANY, PACIFIC TELEPHONE AND TELEGRAPH COMPANY and SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY Proposed Bell System Operating Companies Tariff F.C.C. No. 4, Overseas Connecting Facilties for Other Common Carriers.	)	Transmittal No. 5

To: Common Carrier Bureau

ERRATA

In the Reply filed by ITT World Communications Inc., on July 19, 1977:

In the Introduction, page 2, first paragraph, line 3, substitute June 21, 1977 for July 21, 1977;

On page 10, second paragraph, lines 15 and 16, substitute Petition for Reconsideration for Petition for Rejection.

Respectfully submitted,

ITT WORLD COMMUNICATIONS INC.

By:

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Randall B. Lowa

Its Attorneys
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Dated: July 20, 1977

CERTIFICATE OF SERVICE

I, Luray Granau, certify that I have this 20th day of July, 1977 sent a copy of the foregoing "Errata" by United States mail, first class postage prepaid, to the following:

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Luray Granau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
BELL SYSTEM OPERATING COMPANIES)
)
Proposed Tariff F.C.C. No. 4,) Transmittal No. 5
Overseas Connecting Facilities)
for Other Common Carriers)

To: Chief, Common Carrier Bureau

REPLY OF RCA GLOBAL COMMUNICATIONS, INC.

RCA Global Communications, Inc. (RCA Glōbcom) hereby replies to the opposition by American Telephone and Telegraph Company (AT&T), dated July 5, 1977, to RCA Glōbcom's "Petition for Rejection" of proposed Tariff F.C.C. No. 4 of the Bell System Operating Companies (hereafter "Bell" or "AT&T").*

RCA Glōbcom urged in its Petition for Rejection that the tariff scheme proposed by AT&T to replace the intercarrier contracts, pursuant to which these facilities are currently provided to the international record carriers (IRCs), should be rejected on the following grounds:

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* The subject tariff was filed in purported compliance with the Commission's Final Decision and Order in Docket No. 20452, 42 F.R. 16177 (March 25, 1977), to establish rates and regulations applicable to the provision of facilities to the International record carriers (IRCs) necessary to bring the overseas transmission facilities into the operating offices of the international carriers, including the AT&T Long Lines Department. As such, they are integral parts of circuits used for foreign or overseas communication.

- That such tariff is "unjust and unreasonable", and therefore unlawful, under Section 201 (b) of the Communications Act in view of the special requirements applicable to the international entrance facilities in issue;*
- That the tariff is unlawfully discriminatory on its face, in violation of Section 202 (a) of the Act, since it will result in a different charge for functionally equivalent facilities depending on whether such facilities are connected to a transatlantic or transpacific cable or satellite circuit; and
- That the tariff will result in a "discontinuance, reduction, or impairment of service" previously available without appropriate Section 214 authority in that it makes no provision for facilities of group or wider bandwidth or for temporary facilities.

We also noted that the Commission has before it petitions for reconsideration which point out serious legal and factual defects in the Commission's Final Decision and Order in Docket No. 20452. Since that decision constitutes the underlying authority for any tariff filing, it is our position that it would in no event be proper to permit this tariff to become effective in advance of a ruling on the pending pleadings.

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* The fact that these facilities are "different" in essential respects from the local loops provided to OCCs was recognized by AT&T itself in its comments in Docket No. 20452, its Petition for Clarification of the Final Decision and Order and its representations to the Commission after that order was released (see the Commission's Letter to Western Union International, Inc. (WUI) on June 24, 1977).

Moreover, subsequent to the time we filed our Petition for Rejection, it was disclosed by the Commission that representatives of AT&T met with members of the Common Carrier Bureau on at least four occasions after the release of the Final Decision and Order in Docket No. 20452 to discuss the specifics of AT&T's implementation of that Order.* Although it is difficult to determine exactly what transpired at these meetings, from the limited summaries made public, it would appear that issues of substance, material to the resolution of our petitions, were raised.

We believe this to be particularly relevant in light of the recent decision of the District of Columbia Circuit Court of Appeals in Home Box Office, Inc. v. FCC (Case No. 75-1280, decided March 25, 1977). As stated by the Court of Appeals:

> "[I]f the Commission relied on these apparently more candid private discussions in framing the final...rules, then the elaborate public discussion in these dockets has been reduced to a sham.
>
> Even the possibility that there is here one administrative record for the public and this court

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* Letter from Acting Deputy Chief, Common Carrier Bureau to WUI of June 24, 1977.

> and another for the Commission and those 'in the know' is intolerable."*

It is also inconsistent with the Commission's Memorandum Opinion and Order, released May 7, 1975, instituting Docket No. 20452 which expressly stated that the Commission's decisions would be based on matters "submitted for or incorporated into the record."**

Furthermore, as noted in our letter to the Commission of July 18, 1977, the possibility exists that information uniquely in the possession of AT&T, which might be crucial to the international record carriers' position, may have been excluded from the record of this proceeding.*** For example, the June 24, 1977 letter states that at one such meeting "AT&T started to discuss the 'difference' in cost of building IRC entrance facilities vis-a-vis OCC entrance facilities"**** which explanation was cut off by the Commission. If such a difference in fact exists, it is obviously material to any ultimate finding the Commission may make here.

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* Slip Opinion, p. 89. While AT&T attempts to raise a question as to the intended scope of the Home Box Office ruling (AT&T Opposition, dated July 18, 1977, to Petitions for Rejection of WUI and TRT, pp. 14-17), the fact remains that issues were discussed and possibly decided which directly affected the interests of the international record carriers, who were the principal parties to Docket No. 20452.

** 55 FCC 2d 1014, 1015.

*** Since the Commission did not hold formal evidentiary hearings in Docket No. 20452, the international record carriers did not have resort to discovery and other procedures which might have helped to create the necessary record.

**** FCC Letter of June 24, 1977, p. 3.

We submit that the only way matters of this kind can be finally and fairly resolved would be to reject this tariff and to reopen Docket No. 20452 for the purpose of holding evidentiary hearings in which all parties may fully participate and assertions of fact may be developed on the record and tested by cross-examination. Certainly, it would be improper for the Commission to allow AT&T to impose substantial additional costs on customers for international record services, constrict arbitrarily the facilities offerings now made available to the IRCs and burden IRC operations with the more restrictive provisions contained in the OCC tariffs without developing the required factual record. The Commission simply cannot ignore the facts, or fail to adopt the necessary procedures to get at the facts, and then pass judgment on critical issues affecting the substantial rights and interests of the international record carriers and the public they serve.*

RCA Globcom submits that AT&T's opposition highlights the deficiencies in the subject tariff which warrant its rejection.

First, AT&T states that "there is no dispute that the Commission has ordered that facilities be furnished in the future to International Record Carriers at the same rates as comparable facilities are furnished to Other Common Carriers."* This, of course, presupposes that the facilities in question are indeed "comparable", a contention which we have demonstrated to be contrary to fact and operational practice. Indeed, AT&T's own statements and actions seem to belie this claim. It should be noted that AT&T itself has brought various examples of salient differences in such facilities to the Commission's attention.

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* As the Court of Appeals noted in *Mobil Oil Corp. v. FPC*, 483 F. 2d 1238, 1254 (D.C. cir. 1973), "[A]gencies are [not] granted *carte blanche* to proceed in any way they may see fit."

More importantly, we submit that AT&T's interpretation reinforces the position we have taken that the Commission is prescribing rates without following the required statutory procedures for such action. Clearly, if it was the Commission's intent in Docket No. 20452, as AT&T maintains, for AT&T to file its Tariff F.C.C. No. 266 rate structure, we submit that this must be deemed a "rate prescription" under the relevant judicial precedents. Certainly, the Commission cannot state that it is not prescribing rates, on the one hand, and at the same time effectively achieve the same practical result by allowing this tariff containing the OCC rates to go into effect. As stated by the Court of Appeals:

> "We held, however, in American Telephone and Telegraph Co. v. FCC, supra, 449 F.2d at 451 & n. 12, that to determine whether rates have been prescribed the actual impact of agency action and not its form is decisive.
>
> What is determinative in the instant case is the incontrovertible fact that the special permission provision under review has the same effect as a

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* AT&T Opposition, p. 2, citing Final Decision and Order, paras. 13 and 17.

Section 205 rate prescription."*

We submit that the approach taken in this tariff is basically deficient and the tariff should accordingly be rejected pending further proceedings.

Second, AT&T places considerable reliance on the Docket No. 20099 Settlement Agreement to justify its actions here. AT&T states that since its proposed rates are the same as those agreed to by the parties to the Settlement Agreement, then, insofar as RCA Globcom takes issue with those proposed rates, we are taking issue with the Settlement Agreement which we signed.

However, as we pointed out in our "Petition for Suspension" of the Bell tariff, the primary issues in Docket No. 20099 concerned the inability of then new domestic terrestrial and satellite carriers, which offer domestic private line services in competition with AT&T, to obtain requisite facilities from AT&T in a timely manner and at reasonable rates. Although the IRCs participated in the Docket No. 20099 negotiating sessions, and signed the Settlement Agreement, their interests were peripheral to the primary issues which concerned the domestic OCCs. Indeed, during the discussions it was expressly recognized that the IRCs obtained entrance facilities pursuant to contractual arrangements with AT&T and no party including AT&T suggested any change to such arrangements.* Paragraph 5 of the Settlement Agreement stated in relevant part:

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* American Telephone and Telegraph Company v. FCC, 487 F.2d 865, 874 (2d Cir. 1973)

> "The parties recognize the unique needs of the International Record Carriers between gateway cities and for entrance channels from cable heads and earth stations to those carriers' central offices located in metropolitan areas. Facilities for those purposes are now provided pursuant to contract."**

It was only after the Settlement Agreement was signed that the Commission expressed formal concern with such arrangements and raised a new issue for future investigation.*** Thus, at the time when the IRCs signed the Settlement Agreement it was not known or anticipated that the terms and conditions agreed to by AT&T's new competitors would become binding upon them.

Under the circumstances, it is disingenous for AT&T to argue here that the IRCs made a conscious choice to accept the full effect of the Docket No. 20099 Settlement Agreement and that these carriers are now estopped from taking issue with the terms of that

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* American Telephone and Telegraph Co. et al, 52 FCC 2d 727, 735 (1975).

** Id. at 740.

*** On the same day it accepted the Settlement Agreement, the Commission opened Docket No. 20452 to inquire expressly into the IRC arrangements. Interconnection Facilities Provided To The International Record Carriers, 52 FCC 2d 1014 (1975).

Agreement. Rather, as noted above, the Settlement Agreement, by its terms, acknowledged the special case of the IRCs and carved out an exception which, as a practical matter, exempted them from virtually all of the Agreement's operative provisions.

It is also questionable at best whether the IRCs would have signed the Settlement Agreement had it not made express provision to preserve their preexisting contractual rights. This situation, we submit, is not changed by the Commission's decision in Docket No. 20452, some two years after the Settlement Agreement was signed, which declined to accept the distinction made in Paragraph 5.

Third, while AT&T alleges that there will be no diminution in the quality and availability of facilities, AT&T in fact is proposing to make significant changes in both the types of facilities offered and the manner in which facilities will be provided.

For example, AT&T concedes that it intends to terminate the offering of group and supergroup facilities* and cites as alleged justification the fact that these facilities have not been heavily used in the past. We submit, however, because demand for a given offering may not be great does not justify discontinuance of that offering or diminish the fact that something we have now is being taken away. Such a termination cannot be accomplished by a bare tariff filing under the statute and cases.* Moreover, given changing technology, we submit that these types of facilities will be of increasing importance to the IRCs in the future. We also remind the Commission that such facilities are presently offered to domestic satellite carriers (see AT&T Tariff F.C.C. No. 265, Page 19) and it would be a prima facie discrimination to deny equivalent facilities to the IRCs.

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* AT&T Opposition, p. 10.

Similarly, although AT&T maintains that circuits having a "fixed loss" will still be provided, the caveat is that channel conditioning would have to be ordered as a prerequisite to obtaining the fixed loss. As a result, RCA Globcom will be put in the position of paying for conditioning for every entrance circuit, whether the service to be provided needs it or not. The alternative is a melange of interface levels requiring level-adjusting equipment in the central office. Under the intercarrier contracts, fixed loss was standard, regardless of the equalization criteria specified.

We also question AT&T's self-serving characterization of its termination of all temporary facilities offerings as being merely a rate increase and not a diminution or impairment of service. As noted in our Petition for Rejection, temporary facilities are currently regularly employed by the IRCs to meet a variety of special requirements, such as to provide circuits to the Government and the press in connection with Presidential trips abroad. AT&T's unexplained and unjustified increase of nearly tenfold in the cost of a principal component of this circuitry could render this service uneconomic to many users and directly result in a serious reduction in the availability of essential overseas communications. Furthermore, accepting arguendo AT&T's characterization of its action as a rate increase, we submit that where the rate increase is of such a magnitude as to vitiate the practical utility of the service itself, a discontinuance or impairment is present. This is all the more compelling here where, as noted, no cost or other justification has been provided to warrant such an increase.

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* ITT World Communications Inc. et al. v. New York Telephone Co., 381 F. Supp. 113, 120 (S.D.N.Y. 1974).

In general, the instant tariff fails to provide the same range of facilities and degree of operating flexibility presently provided pursuant to the practices under the existing contracts. Since the IRCs' facilities in issue are an integral part of the overseas transmission link (and not end links or local loops to customer locations), such flexibility is essential to the provision of their public service offerings.

Fourth, AT&T fails to justify the obvious discrimination in charges proposed for international entrance circuits, depending upon whether they are linked to a transatlantic or a transpacific cable or satellite circuit. Although AT&T indicates that its OCC rates for such lines wholly within a single state were set at levels equal to that state's intrastate private line rates, that neither supports the rate level selected nor explains why integral parts of lines used solely for foreign communication should be taken pursuant to an intrastate rate structure. Indeed, it would be ironic if, in implementing a Commission Order allegedly issued to end discrimination, the IRCs were required to take service under an intrastate rate pattern over which the Commission has no jurisdiction and at rates which are clearly discriminatory.*

Fifth, AT&T attempts to avoid confronting the obvious discrimination which results from the treatment of certain locations as Category A and others as Category B by noting that an investigation concerning its MPL tariff filing is pending in Docket No. 20814. The fact remains, however, that international cableheads and satellite earth stations are generally treated as Category B locations. It is also a fact that Lodi, California, one of our major operating centers, is regarded as a Category A location for the U.S. Government and a Category B location for RCA Globcom. This differing treatment is discriminatory on its face.

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*In a recent case, State of California v. F.C.C., Case No. 75-2060 (D.C. Cir. June 20, 1977) the Court quoted with approval the Commission's determination that: "[t]he key issue ... is the nature of the communications which pass through the facilities, not the physical location of the lines." (Slip Opinion, p. 5).

The designation of a location as one category or the other is important since rates for like distances increase in the case of service between a Category A and a Category B location, and increase even more in the case of service between two Category B locations. Further, AT&T's admission that it is "considering" whether cablehead/earth station locations qualify for Category A rate treatment* suggests that such determination is an arbitrary decision on its part.

To argue, as AT&T does, that these questions can only be properly raised in Docket No. 20814 is specious since the instant Bell tariff is a new tariff covering facilities heretofore not provided under tariff. It should be noted that AT&T was not specifically ordered in Docket No. 20452 to extend its Tariff No. 266/260 rate or service structure to this offering, and, indeed, has varied from that structure in recognition of the fact that the international entrance circuits in issue are different from the facilities provided to OCCs. AT&T therefore cannot hide behind the outstanding dockets to shield it from accountability here for the tariff scheme it selected. On the other hand, as noted above, if AT&T is correct in its view that it was required by the Final Decision and Order in Docket No. 20452 to impose Tariff No. 266/260 rates, then we submit, as noted above, that this constitutes an improper rate prescription. Certainly, AT&T cannot have it both ways.

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*AT&T Opposition, p. 13.

In conclusion, we submit that AT&T has failed to explain or justify adequately the patent defects in this tariff which warrant its rejection. If this tariff scheme were permitted to take effect, the IRCs and their customers would be needlessly burdened without any showing whatsoever that the approach taken by AT&T is either justified by legitimate cost or operational considerations or required by the Commission's decision in Docket No. 20452. We further submit that the Commission cannot overlook the discriminatory features of this tariff or the fact that it will eliminate or impair various existing facilities offerings to the detriment of the ultimate user without lawful authority. The foregoing underscores the need for rejection of this tariff pending the further evidentiary procedures and analysis of information we have requested in our petition for reconsideration of the Final Decision and Order in Docket No. 20452.

WHEREFORE, for the reasons set forth herein and in our "Petition for Rejection", the AT&T Tariff must be rejected.

Respectfully submitted,

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July 22, 1977

CERTIFICATE OF SERVICE

I, Fay H. Ginsberg, hereby certify that on this 22nd day of July, 1977, I mailed a copy of the foregoing document by United States mail, postage prepaid, to the following:

Ruth V. Reel, Esq.
Chief, Tariff Division
Federal Communications Commission
Washington, D.C. 20554

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Gerald E. Murray, Esq.
American Telephone & Telegraph Co.
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New York, New York 10007

Edgar Mayfield, Esq.
Alfred G. Walton, Esq.
AT&T Long Lines
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Warren Y. Zeger, Esq.
Comsat General Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

Mr. Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Mr. J. A. Berenger
The French Telegraph Cable Company
25 Broad Street
New York, New York 10004

Joseph J. Jacobs, Esq.
ITT World Communications, Inc.
67 Broad Street
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Roderick A. Mette, Esq.
TRT Telecommunications Corporation
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Robert Michaelson, Esq.
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Fay H. Ginsberg

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

BELL SYSTEM OPERATING COMPANIES

Proposed Tariff F.C.C. No. 4,
Overseas Connecting Facilities
For Other Common Carriers, and
Proposed Revisions To Tariff
F.C.C. No. 266, Facilities for
Other Common Carriers.

To: The Common Carrier Bureau

Transmittal No. 5

Transmittal No. 12758
Docket No. 20452

REPLY

Western Union International, Inc. (WUI) hereby replies to the opposition by American Telephone and Telegraph Company (AT&T), dated July 18, 1977, to WUI's Petition for Rejection of the above-captioned tariffs.

Introduction

1. The bulk of AT&T's opposition is devoted to an attempted refutation of the issues raised by WUI concerning the violations of both the Commission's Rules and the principles set forth in *Home Box Office Inc. v. FCC*,* contained in the numerous ex parte meetings between AT&T officials and the Commission Staff. In addition the opposition touches upon other matters, many of which were not raised in WUI's Petition

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*Case No. 75-1280 (D.C. Cir., March 25, 1977).

for Rejection. WUI will first deal with these other matters before addressing the serious ex parte issue.

Docket No. 20452

2. AT&T claims that since the subject tariffs were allegedly filed pursuant to the Commission's Order in Docket No. 20452, they are somehow automatically deemed lawful.* This position, aside from being patently invalid, ignores the following language contained in footnote 8 of that Order:

> "We express no opinion herein regarding what particular tariff regulations, level of tariff charges, etc., AT&T should file to remove its inequitable treatment of carriers. However, we reserve the right to accept, reject, suspend or investigate whatever may be filed."**

3. Thus, the issue of the tariffs' lawfulness is not foreclosed by AT&T's claim that the tariffs comply with the decision in Docket No. 20452.*** In fact, one of the reasons AT&T held the ex parte meetings with the Commission Staff was to insure that the subject tariffs did comply with Docket No. 20452. This is a complex issue and AT&T's oversimplification must be rejected. Moreover, by holding the ex parte meetings in an attempt to insure compliance with the Commission decision in Docket No. 20452, AT&T has created

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*See AT&T Opposition, para. 3.

**63 FCC 2d 761, at 767.

***If AT&T's claim were correct, it is tantamount to a concession that the Commission unlawfully prescribed the tariff rates without a hearing.

a situation where this issue cannot be fairly judged by the Commission. The tariffs must be rejected.

Docket No. 20099 and the "Settlement Agreement"

4. AT&T claims that the IRCs have no standing to question the rates proposed in the tariffs in question, because the rates are, allegedly, controlled by the Settlement Agreement in Docket No. 20099 to which the IRCs are signatories. The transparency of this position was demonstrated by RCA in its Reply dated, July 22, 1977.*

5. Moreover, one may search the entire record of these proceedings and not find one glimmer to indicate that AT&T ever believed that its contractual arrangements with the IRCs for the tail circuits were in any way affected by the Settlement Agreement. For example in its Comments dated June 23, 1975 in Docket No. 20452, AT&T stated:

> "AT&T has been providing entrance and intercity facilities to IRCs pursuant to contract for many years. Certain Bell Operating Companies have also provided intercity entrance facilities from radio sites to the IRCs under long standing special agreements. These contract arrangements have heretofore proved to be satisfactory to both the Bell System and the IRCs, and take into account the discrete needs of the IRCs for facilties between gateway cities and for entrance channels from cableheads, radio sites and earth stations to their operating centers in metropolitan areas. Nevertheless, AT&T is prepared to provide such facilities at appropriate rates if the Commission determines that the public interest would be served by discontinuing the present arrangements."

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*See pp. 7-9.

6. If AT&T truly believes that the Settlement Agreement in Docket No. 20099 prescribed abrogation of the AT&T-IRC contracts and the filing of the above-captioned tariffs, why did it not say so on June 23, 1975 when the issue was ripe for Commission decision. The answer is clear -- no one, especially AT&T, had the least conception that Docket No. 20099 had any relation to the facilities at issue herein. This latter-day reliance on Docket No. 20099 is a weak attempt to justify an otherwise unjustifiable tariff.

7. Further support of the non-applicability of Docket No. 20099 can be found in the lack of any reference, either to that Docket or to the Settlement Agreement, in AT&T's Reply Comments in Docket No. 20452 dated July 8, 1975. AT&T once again supported its then existing contractual arrangements with the IRCs:

> "The international record carriers (IRCs) uniformly support the conclusion that the entrance facilities which AT&T provides to the IRCs from cableheads and earth stations to the IRCs' operating centers in gateway cities take into account the discrete needs of the IRCs and warrant a continuation of the existing contractual arrangements. As AT&T has pointed out in its Comments and in its June 6, 1974 letter concerning the same question, the longstanding contractual arrangements between AT&T and each of the IRCs, are mutually satisfactory. The IRCs' Comments confirm that fact."

8. Thus, the reliance of AT&T on Docket No. 20452 and Docket No. 20099 for support of its position as to the legality of the subject tariffs is misplaced.

Transiting Facilities Provided To Foreign Administrations

9. As WUI has repeatedly pointed out in its various pleadings filed herein, the effect upon foreign administrations of the Commission decision in Docket No. 20452 and the proposed AT&T tariffs has never been grasped by the Commission.* The Commission has clearly mandated that the subject facilities be provided "to all entities on the same terms."** In its Opposition (at p. 11), AT&T concedes that if the Order in Docket No. 20452 required identical rates to be charged to foreign administrations, the result would be higher rates payable by the foreign administrations for their tail circuit transiting facilities. AT&T does not deny that it furnishes identical tail facilities to both the foreign administrations and the IRCs. Thus, the discriminatory effect of the proposed tariffs is admitted by AT&T.

10. Moreover, the reactions of the foreign administrations to this potential rate increase, and the likelihood of any corresponding increased charges for U.S. carriers' foreign transiting circuits, is unknown since the Commission has refused to address this issue. This proceeding presents the last opportunity for an exploration of this crucial issue. The tariffs should be rejected, and a full evidentiary hearing should be held so that the complex issue of the

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*See WUI Petition for Reconsideration, dated April 22, 1977, pp. 12-15; and WUI Petition for Rejection, dated July 6, 1977, pp. 9-10.

**63 FCC 2d 761, at 765.

impact of the proposed tariffs on the relationships between the U.S. carriers and the foreign administrations can be determined.

11. AT&T claims that this issue is not properly a part of this proceeding. Once again it appears that AT&T has adopted a position at variance with its past views in this proceeding in a weak attempt to support its unsupportable tariff. It must be remembered that WUI has previously raised the foreign transiting issue in Docket No. 20452. AT&T also addressed the same issue in its Reply Comments dated July 8, 1975:

> "As pointed out by Western Union International Inc. (Comments, p. 6), if the Commission requires the use of tariffs for the provision of facilities to the IRCs, it may well have significant impact on the relationships between United States carriers and foreign telecommunications entities which transit the United States if these entities are also required to obtain transiting facilities under tariff. It is not unlikely that these foreign administrations, particularly those which are members of the European Conference of Posts and Telecommunications Administrations (CEPT), might increase the charges to AT&T and other United States carriers for transiting facilities overseas."

12. Not only did AT&T believe that the foreign administration transiting issue was "in" this proceeding but it wholeheartedly endorsed and adopted the position of WUI!

Ex Parte Issue

13. AT&T struggles to extricate itself from the web of its own violations of the Commission's Rules and the

Home Box Office decision stemming from AT&T's numerous ex parte meetings with the Commission Staff. AT&T argues: (a) that these meetings only involved the tariff filings and had no relation to Docket No. 20452 and, therefore, the Commission's Rules dealing with restricted rulemaking are inapplicable; (b) that even if the restricted rulemaking provisions were applicable, the ex parte discussions did not involve the merits of Docket No. 20452; and (c) the ex parte discussions involved no impropriety.

14. AT&T's claim that the tariff filings are somehow unrelated to Docket No. 20452 must be rejected. This position blatantly ignores the Commission's pronouncement in its Order, released June 9, 1977, in Docket No. 20452. That order addressed requests by the IRCs for deferral of the AT&T tariff filings until after the Commission decided the pending Petitions for Reconsideration. The Commission denied the requests and, in so doing, stated:

> "We will act on the merits of the pending Petitions for Reconsideration and Clarification *in light of the tariff filings* made by AT&T and any comments filed with respect thereto." (Emphasis added).

Moreover AT&T, in its opposition, notes that one of the major issues concerning its tariff filings is whether or not they comply with the Commission's decision in Docket No. 20452. Therefore, Docket No. 20452 and the tariffs involved in the instant proceeding are inexorably intertwined.

15. Similarly, AT&T's contention that Docket No. 20452 was somehow terminated by the release of the Commission's Final Decision and Order, on March 23, 1977, is untenable. AT&T's contention is at odds with the Commission's Rules on ex parte presentations. Specifically, Rule 1.1207 entitled, "Restricted rule making proceedings," states:

> "Except as otherwise ordered by the Commission, the following rule making proceedings are "restricted" from the day they are instituted until they have been decided by the Commission and are no longer subject to reconsideration by the Commission or review by any court."(Emphasis added).

16. Since the March 23 Order was subject to reconsideration for a period of thirty days within which the IRCs filed Petitions for Reconsideration, it is clear that Docket No. 20452 has never lost its restricted status, and, therefore, the ex parte meetings were prohibited by the Commission's Rules.

17. The Commission's letter to WUI, dated June 24, 1977, demonstrates that the ex parte meetings went to the heart of the restricted docket. The discussions apparently centered around the proposed tariff filings. As noted above, these filings have been made an integral part of Docket No. 20452 by the Commission's June 9 Order. In addition other matters were discussed. At the March 31, 1977 meeting, AT&T raised the cost difference issue and was advised to file a Petition for Reconsideration. Certainly said discussion goes to the merits or outcome of this Docket. At the meeting of

April 20, 1977, there was additional discussion involving the Commission's Decision in Docket No. 20452. In light of the foregoing, AT&T's claim that it made no "presentation" should be rejected, together with its tariffs.

18. AT&T's hair-splitting attempts to dodge the ex parte rules must fall before the high standards of the Commission's Report and Order, of July 7, 1965, adopting the ex parte rules. In discussing the term "presentation," the Commission stated:

> "Parties to a restricted proceeding and other interested persons, however, are subject to higher standards and have a special responsibility with respect to such communications, if they relate to restricted proceeding in which they are participating. This is true whether the relationship is factual or whether it is a legal or policy matter.... In short, interested persons are entitled to pursue other legitimate interests before the Commission, but must not use the pendency of other matters as a pretext for ex parte communications going to the merits or outcome of a restricted proceeding." (Emphasis added).*

AT&T has violated both the letter and the spirit of the high standards underlying the ex parte rules.

19. Lastly, AT&T argues that any violation by it of the Commission rules has been because WUI has now secured confirmation of the ex parte meetings through its request under the Freedom of Information Act. Accordingly, AT&T argues that the evils addressed in Home Box Office do not apply in this proceeding. This is not the case. As the Court of Appeals noted:

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* 1 FCC 2d 49, at 58.

> "Even if the Commission had disclosed to this court the substance of what was said to it _ex parte_, it would still be difficult to judge the truth of what the Commission asserted it knew about the television industry because we would not have the benefit of an adversarial discussion among the parties."*

20. The evil is not only in _what_ is said in ex parte meetings, but that it is said in the absence of adversary parties. The defect caused by the ex parte contacts cannot be cured by later confirmation. An evidential hearing must be held to determine the nature and source of all ex parte meetings and discussions. _Home Box Office Inc. v. FCC_, _supra_ at p. 100.

21. If AT&T's ex parte meetings were as innocent and inconsequential as AT&T would have us believe, why has AT&T not disclosed its own internal memoranda concerning these meetings? Did AT&T ever discuss the foreign administration transiting issue with the Commission Staff? If so, when, and to what extent? We call upon AT&T to make full disclosure.

22. AT&T's reference to the recent Court of Appeals decision in _Action for Children's Television v. FCC_, (Case No. 74-2006) (D.C. Cir., July 1, 1977) is misplaced. While the Court stated that not all ex parte contacts in rulemaking action are per se illegal, it made abundantly clear that the rule of _Home Box Office_ applied with full force to proceedings involving conflicting private claims to

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*_Home Box Office Inc. v. FCC_, _supra_, at p. 91.

a valuable privilege. Such a proceeding must be carried on in the open.*

Conclusion

23. WUI reiterates its request for rejection of the tariff filings. As noted on page 7 of the AT&T Opposition, one of the grounds for rejection of a tariff is prima facie unlawfulness such as conflict with the Communications Act or a Commission rule, regulation or order.. The violations of the Commission's Rules inherent in the ex parte meetings compel rejection of the AT&T tariffs.

24. Significantly, AT&T has not disputed WUI's arguments (pp. 11-12 of our Petition for Rejection) that a suspension/accounting/hearing proceeding would not adequately protect us against business losses, particularly on the Mainland/Hawaii route where AT&T is our direct competitor. Rejection of AT&T's tariffs is the only adequate remedy under the unique circumstances of this case.

---

*Action for Children's Television v. FCC, supra, at p. 33.

WHEREFORE, WUI respectfully requests rejection of AT&T's proposed tariffs.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: July 28, 1977

CERTIFICATE OF SERVICE

I, Diane A. Blish, hereby certify that a copy of the foregoing Reply of Western Union International, Inc., has been sent by United States mail, postage prepaid to the following:

Mr. J.F. Healy
Administrator, Rates & Tariffs
American Telephone & Telegraph
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P.O. Box 32
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140 New Montegomery Street
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Mr. Boyd M. Guttery
Assistant Vice-President
Southern Bell Telephone &
  Telegraph Company
P.O. Box 2211
Atlanta, Georgia 30301

/s/ Diane A. Blish

Dated: July 28, 1977

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Western Union International, Inc.
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MARC N. EPSTEIN
Attorney

Telephone (212) 363-4812

RECEIVED
AUG 5 1977
LAW DEPARTMENT

July 28, 1977

Mr. Vincent J. Mullins,
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: American Telephone and
Telegraph Company
Transmittal No. 12758
Transmittal No. 5
Docket No. 20452

Dear Mr. Mullins:

In a separate filing made this date, Western Union International, Inc. (WUI) submitted its Reply relating to its Petition for Rejection of the above-captioned tariffs. Both the Petition and the Reply made note of the potential inequity caused by the proposed tariffs when they are applied to the U.S. Mainland/Hawaii route where AT&T is a direct competitor of the IRCs. We noted that a suspension/accounting order/proceeding would not adequately protect us from business losses, and advocated tariff rejection as our only adequate remedy.

In this connection, WUI believes that certain Comments dated July 1, 1977 submitted by AT&T with reference to WUI's transmittal No. 1142 (Proposed revisions to Tariff F.C.C. No. 4 establishing lower charges for alternate voice/data leased channel service between U.S. Mainland and Hawaii) are most relevant to the AT&T tariff issue, and therefore, should be incorporated into the record in Docket No. 20452.

AT&T attempts to use its proposed tariffs in this proceeding to prevent a WUI initiated rate reduction, in furtherance of Hawaiian rate integration, between the U.S. Mainland and Hawaii. At pages 2 and 3 of its Comments, AT&T criticizes WUI for using tail circuit costs based on the General Lease Agreement (GLA) from which AT&T seeks to withdraw in Docket No. 20452, and goes on to state:

> "Accordingly, the WUI filing may be unrealistic to the extent that it does not reflect the new BOC 4 tariff rates for tail facilities on the U.S. Mainland rather than the soon-to-be-terminated GLA contract prices. Reflecting these new rates would change the average annual cost per Mainland tail circuit from $2,356.64 to $9,095.73 (See Attachment 1), the "Facility Rentals-Total Circuits" from $8,325 to $15,064, the annual revenue requirements from $35,475 to $42,214 and the monthly revenue requirements from $2,956 to $3,518 (Revenue Requirements Summary). Thus, after the effective date of BOC 4, WUI's proposed rate ($2,965) would fall below its cost ($3,518) even assuming all other elements of WUI's cost study are accurate."

The above position of AT&T clearly demonstrates the anticompetitive and discriminatory use to which AT&T will put its proposed tariffs on the Mainland/Hawaii route. This anticompetitive position also makes more grievious AT&T's ex parte representations in Docket No. 20452, which were apparently designed to facilitate the effectiveness of the captioned tariffs and the termination of the GLA. AT&T's anticompetitive stance, as manifested in its above-quoted July 1 Comments on WUI's proposed reduced Hawaiian rate, supports WUI's Petition for Rejection of the captioned AT&T tariffs.

Very truly yours,

Marc N. Epstein

MNE: db

CERTIFICATE OF SERVICE

I, Diane A. Blish, hereby certify that a copy of the foregoing letter of Western Union International, Inc., has been sent by United States mail, postage prepaid to the following:

Mr. J.F. Healy
Administrator, Rates & Tariffs
American Telephone & Telegraph
Company
P.O. Box 32
Bedminster, New Jersey 07921

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Mr. Boyd M. Guttery
Assistant Vice-President
Southern Bell Telephone &
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P.O. Box 2211
Atlanta, Georgia 30301

/s/ Diane A. Blish

Dated: July 28, 1977

File: Facilities Agreement Inquiry

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C. E. Yates
Rate and Tariff Director

AT&T
American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8155

August 5, 1977

CC: RPR
REC
MNE
PHS
DHT
TJJ

Mr. Philip V. Permut
Acting Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: AT&T Transmittal No. 12758; AT&T, New Jersey Bell, Pacific Telephone and Telegraph and Southern Bell Telephone Transmittal No. 5

Dear Mr. Permut:

This is in response to your letter of June 29, 1977, reference 9550, in which you request a deferral of the effective date of the tariffs forwarded with the above captioned Transmittals.

AT&T will defer the effective date of the tariff materials filed under the referenced Transmittals from August 25, 1977 to September 16, 1977. We anticipate filing a request for Special Permission seeking authority to defer the effective date of the filed tariffs in the near future.

Your letter did not specifically address the provision of interoperating center facilities to the International Record Carriers (IRCs) pursuant to a General Agreement for Leasing of Circuits (General Lease Agreement) with each IRC. AT&T has given notice of termination of those agreements, effective August 26, 1977, to each affected carrier. As we noted in the Transmittal letters in response to the Commission's Final Decision and Order in Docket No. 20452, the provision of entrance facilities under Bell System Operating Companies Tariff F.C.C. No. 4 and the provision of interoperating center facilities under the appropriate facility tariffs were both scheduled to begin on August 26, 1977. We have assumed, therefore, that your request related both to entrance facilities and interoperating center facilities and have acted accordingly. If this assumption is incorrect, please advise us.

By separate letter, we have notified each of the affected IRCs of our intention: (a) to postpone until September 16, 1977, the effective date of the referenced Tariff Transmittals, and (b) of our willingness to continue to provide, through September 15, 1977, interoperating center facilities, at rates equal to those currently established in the General Lease Agreements, pursuant to your request. A copy of the letter to Western Union International, Inc. is enclosed for your information. Identical letters were sent to ITT World Communications Inc., The French Telegraph Cable Company, TRT Telecommunications Corporation and RCA

Global Communications, Inc.. As noted in those letters, the deferral of the tariff effective date does not affect the August 26, 1977 termination of the General Lease Agreements with the various IRCs. However, as indicated in the letters, we have offered to continue to furnish entrance facilities, of the type described in the tariff materials filed with the above described transmittals, and interoperating center facilities to IRCs at rates equal to those set forth in the General Lease Agreements for the period to and including September 15, 1977.

Very truly yours,

C E Yates

Attachment:
Copy of Letter to Western Union International, Inc.

c.c.: All parties of record in Docket No. 20452

Richard B. Nichols
Vice President

AT&T Long Lines
Room 4B114
Bedminster, New Jersey 07921
Phone (201) 234-7711

August 4, 1977

REGISTERED MAIL

Mr. Robert E. Conn
Executive Vice President
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Dear Mr. Conn:

On May 27, 1977, AT&T gave notice of termination of the "General Agreement for Leasing of Circuits" and the agreement concerning the lease of group and supergroup bandwidth facilities. These terminations are effective August 26, 1977.

By letter of June 29, 1977, the Acting Deputy Chief of the Common Carrier Bureau requested that AT&T postpone the effective date of the Bell System Operating Companies Tariff F.C.C. No. 4 (BOC 4) from August 25, 1977 to September 16, 1977. In accordance with that letter, and for the reasons stated therein, AT&T has acceded to the Commission's request and will seek special permission to defer the effective date of the Tariff F.C.C. No. 4 from August 25, 1977 to September 16, 1977. We have also agreed to continue to provide interoperating center facilities to the International Record Carriers at rates equal to those currently established in the General Lease Agreement.

In light of the above, AT&T hereby gives notice that:

(1) it offers to continue to furnish voice grade, group and supergroup bandwidth facilities between your operating centers and overseas satellite earth stations, cableheads and radio sites for the period to and

including September 15, 1977 at rates equal to those set forth in the aforementioned agreements. Fifty-six (56) Kbps Data Facilities between these locations will continue to be offered under AT&T Tariff F.C.C. No. 266; and

(2) it offers to continue to furnish facilities between your operating centers, for the period to and including September 15, 1977, at rates equal to those set forth in the aforementioned agreements.

Please let us know whether the above-described offer is acceptable. If we do not hear from you by August 15, we will assume that it is and will act accordingly.

Should you have any questions regarding this matter, please contact Mr. Roger W. Hubbell on (201)234-7877.

Very truly yours,

S/R. B. Nichols (R. A. N.)

cc: Mr. Philip V. Permut

File: Facilities Agreement Inquiry

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Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

MARC N. EPSTEIN
Attorney

Telephone (212) 363-5812

August 9, 1977

Mr. Richard B. Nichols
Vice President
American Telephone & Telegraph Co.
Room 4B114
Bedminster, New Jersey 07921

Re: General Agreement for Leasing of Agreements dated May 9, 1968 and Letter Agreement dated November 20, 1968

Dear Mr. Nichols:

By the attached letter of June 9, 1977, we requested that you defer your proposed termination of the above-captioned agreements from August 26, as initially proposed by you until such time as your Tariff F.C.C. No. 4 might become effective.

We have just received your letter of August 4 which, although failing to mention our letter of June 9, proposes to maintain our existing rates to September 15, the presently scheduled effective date of your proposed tariff.

Although we have no objection to the proposal contained in your letter of August 4, we reserve all of our existing legal rights to maintain the above-captioned agreements.

Your August 4 proposal, however, presents the same problem noted in our June 9 letter. Your timetable leaves no margin for error. In the event that the effective date of the tariff is deferred beyond September 15, for any reason, a question will arise again as to the terms and conditions governing our use of the subject facilities.

Therefore, we reiterate our June 9 suggestion that the termination date of the above-captioned agreements be modified, so that they will terminate either on September 15, or if the tariff is not then effective, on the effective date of the tariff.

Very truly yours,

Marc N. Epstein

bcc: EAG RPR
JGM TSG
EB DHT
RM PHS
REC EPON

[illegible] Common Carrier Bureau

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

ROBERT E. CONN
Executive Vice President

Telephone (212) 363 6404

June 9, 1977

Mr. Richard B. Nichols
Vice President-Overseas
American Telephone & Telegraph Company
Long Lines Department
Room 4B114
Bedminster, New Jersey 07921

Re: General Agreement for Leasing of Facilities, dated May 9, 1968, and Letter Agreement, dated November 20, 1968

Dear Mr. Nichols:

This is in reference to your proposed termination of the above-captioned agreements between American Telephone and Telegraph Company and Western Union International, Inc. Such termination would be effective August 26, 1977, assuming that the subject facilities would then be available to WUI pursuant to Tariff F.C.C. No. 4, which is scheduled to become effective on August 25, 1977.

Unfortunately, the timetable adopted by AT&T leaves no margin for error. In the event that the effective date of the tariff is deferred beyond August 25, 1977, for any reason, WUI might not be able to obtain the subject facilities, since the contracts will have been terminated and the tariff not yet effective. Any resulting termination of service would be contrary to law and to the public interest.

Therefore, we suggest that your termination notice be modified, so that the agreements will terminate either on August 26, 1977, or if the tariff is not then effective, on the effective date, if any, of Tariff F.C.C. No. 4.

This letter is without prejudice to our position that these facilities should continue to be furnished by contract rather than by tariff. Additionally, we reserve the right to take appropriate regulatory or judicial actions to protect our interests.

Very truly yours,

Robert E. Conn

bcc: EAG RPR
JGM TSG
EB DHT
RM PHS
MNE EPON

638

RECEIVED
AUG 17 1977
LAW DEPARTMENT

ITT World Communications Inc.

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-4825

Joseph J. Jacobs
Vice President and
General Attorney

August 15, 1977

Mr. Richard B. Nichols
Vice President
AT&T Long Lines
Room 4B114
Bedminster, New Jersey 07921

Dear Mr. Nichols:

Your letter to Mr. Tower, dated August 4, 1977, has been referred to me for reply. ITT World Communications Inc. (ITT Worldcom) is, of course, willing to accept the provision of facilities now covered by the General Lease Agreement between AT&T and ITT Worldcom at the rates specified in that agreement to and including September 15, 1977.

It is our view, however, that these rates must be provided pursuant to existing contracts or a valid tariff. This was our understanding of what was being done. However, your letter to Mr. Tower, as well as AT&T's letter to Mr. Philip V. Permut, Acting Deputy Chief of the Common Carrier Bureau, Federal Communications Commission, dated August 5, 1977, make it clear that this is not the case. Indeed, your letter to Mr. Tower very carefully states that the facilities in question will be furnished "at rates equal to those currently established in the General Lease Agreement" and the letter to Mr. Permut states that the deferral of the tariff effective date "does not effect the August 26, 1977 termination of the General Lease Agreement".

I do not believe that AT&T may properly terminate the existing contracts and concurrently defer the effective date of the proposed tariff revisions, since in the interim period between August 26 and September 16, it would mean that the facilities now covered by the General Lease Agreement would not be furnished to ITT Worldcom pursuant to either contract or tariff.

Mr. Richard B. Nichols
Page Two
August 15, 1977

It is my view, therefore, that if it wishes to defer the effective date of its tariff, AT&T must also take the logical corollary step of changing its notice of termination from August 26, 1977 to September 16, 1977. Our willingness to accept a notice of termination effective September 16, 1977 rather than August 26, 1977 is, of course, without prejudice to any other legal action we may wish to take to challenge the propriety of the termination itself either before the Commission or any court having jurisdiction in the premises.

Very truly yours,

Joseph J. Jacobs

JJJ/ks

cc: Mr. Philip V. Permut (FCC)
Dan Herald, Esq. (FCC)
Francis J. DeRosa, Esq. (RCA)
Robert Michelson, Esq. (WUI)
Mr. Roger W. Hubbell (AT&T)

RCA Global Communications Inc | 60 Broad Street | New York NY 10004 | Telephone (212) 363-2070

640

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: AT&T Transmittal No. 12758; AT&T, New Jersey Bell, Pacific Telephone & Telegraph, and Southern Bell Telephone Transmittal No. 5

Francis J DeRosa
Vice President and
General Counsel

Dear Mr. Mullins:

August 23, 1977

The above-referenced transmittal letters and accompanying tariff materials were filed by American Telephone and Telegraph Company (AT&T) on May 27, 1977 in connection with the Commission's Final Decision and Order in Docket No. 20452, 63 FCC 2d 761 (1977). These tariffs are intended to establish rates and regulations applicable to the provision of entrance and intercity facilities to the international record carriers (IRCs) previously provided pursuant to intercarrier contracts between AT&T and the IRCs. The instant tariffs are presently the subject of petitions to reject or suspend. Petitions are also pending for reconsideration and clarification of the Final Decision and Order.

By letter dated June 29, 1977, the Commission noting inter alia the pending pleadings sought a deferral of the effective date of these tariffs from August 25, 1977 to September 16, 1977 which was agreed to by AT&T. We have recently been informed by AT&T that it would be willing to consider a further deferral until November 1, 1977, upon request by the Commission, to permit the opportunity to explore a possible negotiated settlement of the controverted matters affecting these tariffs. We submit that such further deferral will serve the public interest by providing an opportunity for the parties, under the aegis of the Commission, to discuss and attempt to work out an amicable resolution of these differences.

Therefore, without prejudice to the legal position of any of the

Mr. Vincent J. Mullins, Secretary
Page 2
August 23, 1977

par[illegible] as set forth in their respective pleadings addressed t[illegible]nal Decision and Order and the subject AT&T tariffs, w[illegible]ctfully request that the Commission request AT&T to defer th[illegible]ctive date of these tariffs until at least November 1, 1977.

Respectfully submitted,

Francis J De

Francis J. DeRosa

FJD/pp

cc: All parties to Docket No. 20452

AT&T

Gerald E. Murray
Attorney

American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8555

August 24, 1977

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

Re: AT&T Transmittal No. 12758; AT&T, New Jersey Bell, Pacific Telephone & Telegraph, and Southern Bell Telephone Transmittal No. 5

Dear Mr. Mullins:

This is in connection with a letter dated August 23, 1977 to you from Francis J. DeRosa, of RCA Global Communications, Inc., relating to the above-described matter.

We would be willing to participate in a meeting convened by the Staff of the Commission at which the above described subject is discussed. At such a meeting we would be happy to listen to points raised by the International Record Carriers on the questions of compliance with the Commission's Final Decision and Order in Docket 20452 as it relates to entrance facilities. We do not, however, believe that a settlement negotiated by the parties would be appropriate in view of the existence of the Commission directives in the said order which we have complied with. We would consider further deferral of the effective date of the tariff filings in question for a reasonable period if, either before or after such a meeting, such a deferral is requested by the Commission Staff. Without such a request, however, we do not believe it to be appropriate to defer the effectiveness of the tariff filings beyond September 16, 1977, the presently scheduled effective date.

Respectfully submitted,

Gerald E. Murray

cc: All parties to Docket No. 20452

RECEIVED
AUG 29 1977
LAW DEPARTMENT

ITT World Communications Inc

Joseph J. Jacobs
Vice President and
General Attorney

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-4825

August 25, 1977

Mr. Vincent Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: AT&T Transmittal No. 12758; AT&T, New Jersey Bell, Pacific Telephone & Telegraph, and Southern Bell Telephone Transmittal No. 5

Dear Mr. Mullins:

ITT World Communications is in receipt of a letter dated August 23, 1977 from R.C.A. Global Communications, respecting the above referenced tariff transmittals for IRC Entrance Channel Facilities, in which R.C.A. Globcom suggests that the American Telephone and Telegraph Company (AT&T) would be willing to further defer the effective date of its tariffs until November 1, 1977, pursuant to a Commission request therefor, in order to permit discussions under Commission aegis of a possible settlement of the controversies involved therein. RCA Globcom then requests that the Commission seek such a deferral from AT&T of the effective date of those tariffs.

ITT Worldcom strongly supports and endorses this request from RCA Globcom. We are of the view that there is room for meaningful discussions among the IRCs and AT&T looking toward some form of settlement of the controversies created by the referenced tariff filings. It is obvious, however, that no such discussions can be brought to a conclusion prior to the present September 16, 1977 effective date for those tariffs. Therefore, given AT&T's apparent willingness to

Mr. Vincert Mullins
Page Two
August 25, 1977

further defer the effective date of those tariffs until November 1, 1977, upon the Commission's request therefor, ITT Worldcom wishes to join in the RCA Globcom request to the Commission that it so act to seek such a further deferral from AT&T.

Very truly yours,

John A. L.

for Joseph J. Jacobs

JJJ/em
cc: All Parties to Docket No. 20452

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

August 29, 1977

IN REPLY REFER TO:
9550

Mr. Daniel J. Culkin
Assistant Vice President
American Telephone and Telegraph
  Company
195 Broadway
New York, New York   10007

Dear Mr. Culkin:

We are in receipt of a letter dated August 23, 1977, from RCA Global Communications, Inc. (RCA) requesting us to ask you to defer the effective dates of the tariffs filed in response to the Commission's Final Decision and Order in Docket No. 20452. These tariffs, which deal with entrance and inter-city facilities provided to International Record Carriers and Other Common Carriers, were filed on May 27, 1977, and are presently scheduled to become effective September 16, 1977. The filings in question are:

> Bell System Operating Companies Proposed Tariff FCC No. 4, filed with Transmittal No. 5 of several Bell Operating Companies, and
>
> Revisions to AT&T Tariff FCC No. 266, filed with AT&T Transmittal No. 12758.

In its request, RCA asks deferral until at least November 1, 1977, in order that discussions can be held in an attempt to settle some of the outstanding issues affecting these tariffs prior to their effective date. In your response to RCA's letter, you indicate your willingness to participate in such discussions and to defer the effective date of the tariffs for a reasonable period upon request by the Commission Staff. We also have received a letter from ITT World Communications Inc. supporting RCA's request.

It is our view that the public interest is best served when the parties to a dispute are able to resolve differences they may have in face-to-face discussions. Accordingly, we concur in RCA's request to hold a meeting under Commission auspices for this purpose. In order that any narrowing or eliminating of the disputed issues that may result from these discussions can be taken into account when the Commission rules on the outstanding petitions filed against the tariff filings, we believe a deferral of their effective date is in order. We therefore request that you defer the effective date of the above-listed tariff filings to no later than November 1, 1977.

The meeting, which will be open to the public, will be held at 10:00 AM, Wednesday, September 7, 1977, in Room 847 of the Commission's offices, 1919 M Street, N. W., Washington, D. C. A public notice to that effect is being issued, and is enclosed.

Sincerely yours,

for Walter R. Hinchman
Chief, Common Carrier Bureau

Enclosure

cc: All parties to Docket No. 20452

cy: EFM, RJA, AHE, JD, RVL, SS, RL

AT&T Long Lines
Room 4B114
Bedminster, New Jersey 07921
Phone (201) 234-7711

Richard B. Nichols
Vice President

September 1, 1977

RECEIVED
SEP 7 - 1977
VICE PRESIDENT, OPERATIONS

REGISTERED MAIL

Mr. J. E. Hepburn
Vice President - Operations
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

Dear Mr. Hepburn:

On May 27, 1977, AT&T gave notice of termination of the "General Agreement for Leasing of Circuits" (GLA) and the agreement concerning the lease of group and supergroup bandwidth facilities. These terminations were effective August 26, 1977. Since August 26, we have continued to provide facilities of the types contemplated by the GLA at rates and on conditions equal to those of the GLA and have offered to so provide facilities through and inclusive of September 15, 1977.

By letter of August 29, 1977, the Chief, Common Carrier Bureau requested that AT&T postpone the effective date of the Bell System Operating Companies Tariff F.C.C. No. 4 (BOC 4) and the revisions to AT&T Tariff F.C.C. No. 266 filed with Transmittal No. 12758 from September 16, 1977 to not later than November 1, 1977. In accordance with that letter, AT&T has agreed to the Commission's request and will seek special permission to defer the effective date of the Tariff F.C.C. No. 4 and the revisions to Tariff F.C.C. No. 266 from September 16, 1977 to October 17, 1977. We have also agreed to continue to provide interoperating center facilities to the International Record Carriers at rates and on conditions equal to those that had been established in the General Lease Agreement.

In light of the above, AT&T hereby gives notice that:

(1) it offers to continue to furnish voice grade, group and supergroup bandwidth facilities between your operating centers and overseas satellite earth stations, cable-heads and radio sites for the

period to and including October 16, 1977 at rates equal to those set forth in the aforementioned agreements. Fifty-six (56) Kbps Data Facilities between these locations will continue to be offered under AT&T Tariff F.C.C. No. 266; and

(2) it offers to continue to furnish facilities between your operating centers, for the period to and including October 16, 1977, at rates equal to those set forth in the aforementioned agreements.

Please let us know whether the above-described offer is acceptable. If we do not hear from you by September 12, we will assume that it is and will act accordingly.

Should you have any questions regarding this matter, please contact Mr. Roger W. Hubbell on (201)234-7877.

Very truly yours,

R. B. Nichols

Vice President-Overseas

file (2) Facilities Agree. Inquiry

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

MARC N. EPSTEIN
Attorney

Telephone: (212) 363 5812

September 6, 1977

Mr. Vincent J. Mullins,
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Docket No. 20452

Dear Mr. Mullins:

Please be advised that Western Union International, Inc. (WUI) will attend the meeting of September 7, 1977 concerning the possible settlement of the issues raised by certain tariffs filed by American Telephone and Telegraph Company (AT&T). The filings in question are:

> Bell System Operating Companies Proposed Tariff FCC No. 4, filed with Transmittal No. 5 of several Bell Operating Companies, and
>
> Revisions to AT&T Tariff FCC No. 266, filed with AT&T Transmittal No. 12758.

WUI would like to thank the Commission for its efforts in arranging the settlement discussions.

Our attendance at the above-mentioned meeting is without prejudice to WUI's previously expressed position that said tariffs are unlawful, especially in light of the issues raised by the numerous ex parte meetings concerning these tariffs and Docket No. 20452 held between officials of AT&T and the Commission staff. The September 7 meeting, in our opinion, is not an effective substitute for the other procedural remedies that we have previously requested, such as oral argument before the Commission and a full evidentiary hearing.

650

In any event, WUI pledges its cooperation to reach a settlement in the public interest.

Very truly yours,

Marc N. Epstein

Marc N. Epstein

MNE: db

ITT World Communications Inc.

Joseph J. Jacobs
Vice President and
General Attorney

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-4825

September 8, 1977

Gerald E. Murray, Esq.
American Telephone & Telegraph Company
195 Broadway
New York, New York 10007

Re: Memorandum of Understanding

Dear Mr. Murray:

It is our understanding that as a result of a meeting between American Telephone and Telegraph Company (AT&T) and the International Record Carriers held on September 7, 1977 under the aegis of the Commission Staff, the following terms and conditions will govern the provision of intercity and entrance channel facilities by AT&T to ITT World Communications Inc. (ITT Worldcom) which were the subject of the Commission's Final Decision and Order released March 23, 1977 in Docket No. 20452 and which are incorporated in the tariff proposals of AT&T as submitted under Transmittal Nos. 12758 and 5 dated May 27, 1977 and May 26, 1977, respectively:

a) AT&T will furnish voice grade, group and supergroup bandwidth facilities between the operating centers of ITT Worldcom and overseas satellite earth stations, cableheads and radio sites from August 25, 1977 up to and including October 16, 1977 on the same terms and conditions as set forth in the General Agreement for Leasing of Circuits, dated May 3, 1968, as amended, and the agreement concerning the lease of group and supergroup bandwidth facilities; and

b) AT&T will furnish facilities between the operating centers of ITT Worldcom from August 25, 1977 up to and including October 16, 1977 on the same terms and conditions as set forth in the aforesaid agreements.

Gerald E. Murray, Esq.
Page Two
September 8, 1977

Please acknowledge your acceptance of this understanding by signing where indicated and returning a copy hereof.

Very truly yours,

Joseph J. Jacobs

____
Gerald E. Murray
American Telephone & Telegraph Co.

cc: Mr. B. B. Tower (ITT Worldcom) Randolph Young (FCC), Francis J. DeRosa, Esq. (RCA), Robert Conn, Esq. (WUI), Roderick Mette, Esq. (TRT) Clark McFadden, Esq. (French Cable)

RCA Global Communications, Inc., 60 Broad Street, New York, NY 10004, Telephone (212) [illegible]

RCA

Hepburn
resident
ions

September 12, 1977

Mr. Richard B. Nichols
Vice President
AT&T Long Lines
Room 4B114
Bedminster, New Jersey 07921

Dear Mr. Nichols:

This is to acknowledge RCA Globcom acceptance of the terms set forth in your September 1, 1977 letter as these pertain to the provision of certain facilities leased by AT&T to RCA Globcom.

Essentially, you offer to furnish terrestrial facilities between RCA Globcom operating centers and between those operating centers and overseas satellite earth stations, cableheads and radio sites at the same rates established in a May 3, 1968 "General Agreement for Leasing of Circuits", as amended.

We understand that this agreement will remain in effect until superceded by either an appropriate tariff or another agreement or agreements between AT&T and RCA Globcom.

Sincerely yours,

bc: A. H. Ende
D. J. Elardo

cc

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

September 9, 1977

Y REFER TO:
9500

Robert E. Conn
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Francis J. H. DeRosa
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

Roderick A. Mette
TRT Telecommunications Corp.
1747 Pennsylvania Ave., N. W.
Washington, D. C. 20006

G. E. Murray
American Telephone & Telegraph Co.
Long Lines Department
Bedminster, New Jersey 07921

Lloyd D. Young
Chadbourne, Parke, Whiteside
& Wolff
1150 - 17th Street, N. W.
Washington, D. C. 20036

W. Clark McFadden II
French Telegraph Cable Company
25 Broad Street
New York, New York 10004

R. M. Fulton, Jr.
Western Union Telegraph Co.
1828 L Street, N. W.
Washington, D. C. 20036

Laurence E. Harris
MCI Telecommunications Corp.
1150 - 17th Street, N. W.
Washington, D. C. 20036

Gentlemen:

Attached is a copy of the synopsis or abbreviated minutes of the meeting held at the Commission's offices on September 7, 1977 concerning the new AT&T tariff filings for entrance and transit facilities provided to the international record carriers. Please note that this record is not intended to be verbatim but only to cover the sense of the major items of discussion.

If you believe corrections are required, please advise me of the desired changes by September 19.

Sincerely,

W. R. Young
Chief, Tariff Division

Attachment

Synopsis of Meeting Held at Commission Offices in Washington, D. C. on September 7, 1977 to discuss Transmittals Nos. 5 and 266 Relating to AT&T Tariffs FCC Nos. 4 and 266.

R. Young, FCC - Opened meeting at approximately 10:05 A.M.

Frank DeRosa, RCA Globcom - States that the problems faced here may very well be susceptible to negotiations between IRC's and AT&T. Wants to see whether the parties can work out something to be blessed by the Commission. The matter is susceptible to solution.

R. Conn, WUI - Expressed disapproval of FCC decision in Docket No. 20452 /63 FCC 2d 761/. Points made include the following: The objectives in this case should be lowest cost to ratepayers and to help international relationships. Increased cost to ratepayers of AT&T's new tariff is not disputed. Increase to IRC's would be about $5 million annually. No benefit to ratepayers shown. No competition between international carriers and domestic carriers. Under contract in issue WUI permitted to share voice band with foreign administration. Adverse impact on foreign administrations. Commission has always been concerned with transit charges. Tail circuit nothing more than an appendage of an overseas circuit. FCC prescribed a rate without a hearing.

A. Ende, RCA Globcom - No requirement on part of Commission that we abandon previous approaches to complex situations, where carriers negotiated agreements. In Docket 20452 FCC did not require filing of this new tariff, but only that AT&T eliminate unlawful discrimination. One possible solution is to show there is a difference between IRC's and carriers offering domestic service. The Commission left room for a compromise.

J. Jacobs, ITT Worldcom; C. McFadden, French Cable; and R. Mette, TRT - All expressed general agreement with the positions taken by RCA and WUI.

G. Murray, AT&T - The tariff filing in question is intended to comply with the Commission order in Docket 20452. The discussion at this meeting should not address questions which will take issue with those Commission findings.

A. Ende - We believe we are trying to find a means of compromise.

F. DeRosa - This is not a legal question but a question that should be addressed to management.

G. Murray - The nature of the discrimination found by the Commission involved a rate. We believe the tariff which we filed fully complied with that decision and order. The IRC's were a party to the negotiations in Docket 20099, which developed the rates for the OCC's which are essentially those contained in the new tariff.

There followed a discussion in which the IRC representatives took issue with the latter statement that the IRC's had agreed that the rates developed in 20099 should apply to them. The statement was made (and verified by L. Harris of MCI) that the IRC's insisted on the addition of the "unique services" term to describe the facilities provided by AT&T to the IRC's under that agreement.

A. Ende to G. Murray - Do you want to compromise or do you want to go to the mat?

F. Wehmann, AT&T - Expressed belief that tariff is in agreement with the Commission order. You are asking us to discuss compromise on the basis of whether there is discrimination in the public interest.

R. Conn - Suggested that we have a working party to examine issues in detail to determine if there are areas in which progress is possible.

F. Wehmann - I am at a loss as to what I am supposed to be considering and negotiating.

A. Ende - Cost factors are definitely and explicitly involved.

R. Young - The Commission did not explicitly require the exact tariff AT&T filed. It required only the elimination of unlawful discrimination. Therefore, conceivably there may be room to compromise or narrow the issues. However, anybody who is considering a compromise should look at the criterion the Commission has established in Docket 20452.

F. Wehmann - Entrance and transiting facilities are physically and essentially the same as those provided to domestic OCC's. We cannot cost justify a lower charge to the IRC's.

R. Conn - Suggested discussion on the international aspect and the impact on relations with other countries.

F. Wehmann - It is important that we have the opportunity to see the kind of subjects we might become a party to discussing. It would be impossible for me to respond with a yes until we see the subject matter.

Following a brief discussion of possible matters for discussion it was decided that the IRC's would by letter notify AT&T by September 12 of possible subjects for discussion and AT&T to notify the Commission within several days thereafter whether it feels there is any room for compromise or discussion on these subjects.

R. Young - Expressed view that further meetings should be held only if reasonable prospects for compromise or narrowing of the issues.

R. Young - Asked two questions:

1. What is the base over which the increase in charges apply?

A. Ende - Roughly from $6 million to about $10 or $11 million annually - about a 90% increase.

2. What would be the impact of these new rates on the new, reduced IRC rates to Hawaii?

R. Conn - There will be an impact but at present no change in our current tariff filing is contemplated.

The meeting was adjourned at approximately 12:10 P.M.

Attached list of attendees.

September 7 Meeting

Name	Representing
L. Peterec	WUI
Robert E. Conn	WUI
F. J. DeRosa	RCA Globcom
Joseph H. Jacobs	ITT Worldcom
Roger C. Lewis	RCA Globcom
R. A. Mette	TRT
T. Ray Cary	TRT
G. E. Murray	AT&T
F. J. Wehmann	AT&T
R. B. Nichols	AT&T Long Lines
L. W. Tuft	RCA Globcom
L. D. Young	HTC
R. W. Hubbell	AT&T Long Lines
W. H. Hayes	AT&T
Frank Hopwood	AT&T
Jim Golden	AT&T
Ed Carr	AT&T
Mike Wilson	FCC
N. G. Barnhart	FCC
W. Clark McFadden II	French Cable
H. G. Catucci	WUI
R. T. Fleetwood	WUI
R. M. Fulton, Jr.	WUT Co.
Marc Epstein	WUI
Asher H. Ende	RCA Globcom
Larry Harris	MCI
W. R. Young	FCC

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

MARC N. EPSTEIN
Attorney

Telephone: (212) [illegible]

RECEIVED
SEP 14 1977
LAW DEPARTMENT

September 12, 1977

Gerald E. Murray, Esq.
American Telephone & Telegraph Co.
195 Broadway
New York, New York 10007

Re: AT&T Transmittal No. 12758;
AT&T Transmittal No. 5;
Docket No. 20452.

Dear Mr. Murray:

In accordance with the agreement reached at the settlement meeting of September 7, 1977 held at the offices of the Federal Communications Commission, WUI herewith submits its views as to those issues pertinent for potential settlement discussions between AT&T and the various IRCs.

Although the following list of issues frequently refers to portions of the Commission's Decision in Docket No. 20452 and to certain provisions of the above-captioned transmittals, said references are supplied only for the purposes of settlement discussions. Said references are in no way an indication that WUI is in agreement with any portion of the Commission's Decision in Docket No. 20452 or the AT&T tariffs allegedly filed in compliance therewith. WUI's position that the tariffs are unlawful is unchanged. Likewise, we recognize that AT&T's entry into settlement discussions will be without prejudice to its previously stated positions.

WUI submits that the following categories might be appropriate for settlement discussion:

A. AT&T's Underlying Costs.

1. In light of the Commission's statement in Docket No. 20452 that, the rates and conditions of the provision of the facilities to the IRCs may vary from the rates and conditions of "similar" facilities provided the

SCCs, if justified with Section 61.38 and other data,* to what extent does the pertinent financial data indicate that such justification exists with respect to the IRCs' facilities?

2. When will the underlying cost data be available relevant to the IRCs' facilities?

B. Operational Matters

1. In light of AT&T's statement in Transmittal No. 5 that, "It is appropriate that Overseas Connecting Facilities be offered and administered under the tariff being filed herewith rather than under existing OCC facility tariffs because of the nature of the facilities involved. Such facilities are provided in a manner which is consistent with and particilarly related to the provision of overseas communications". What changes can be made in the tariff which would properly recognize the particular nature of these facilities?

2. Can we identify the various AT&T facilities from the respective international cable and satellite stations (e.g., the Green Hill Microwave System)? If so, to what extent if any, are they used by the IRCs, the domestic SCCs, the foreign telecommunications entities for transiting purposes, AT&T Long Lines overseas services?

3. Can we explore how testing, fault isolation, conditioning, restoration, and other operational functions have been performed by both the IRCs and AT&T under the contract approach, and how they would be performed under the proposed tariff approach?

C. Impact Upon Foreign Administrations And Upon U.S. Carriers' Foreign Transiting Payments.

1. Since the Commission has mandated that the subject facilities be provided to "all entities on the same terms",** what changes, if any, does AT&T plan to make in rates to be charged foreign adminstrations for U.S. transiting facilities?

---

*63 FCC 2d at 767, footnote 8. See also Order 77-361, released June 9, 1977 at para. 3.

**63 FCC 2d 761, at 765.

2. If AT&T plans no change in said rates, how does it differentiate between the IRCs and the foreign administrations, particularly since the U.S. tail circuits for both categories of entities are covered by the several cable construction and maintenance agreements?

3. If AT&T plans to increase the rates for transiting facilities to foreign administrations, commensurate with the increases to the IRCs in the proposed tariffs, what effect will these increases have on international comity and the several cable construction and maintenance agreements? AT&T had admitted that if it must tariff transiting facilities to foreign administrations such an event would have a "significant impact" on the relationships between U.S. carriers and foreign telecommunications entities. Moreover, AT&T has stated a concern regarding a retaliatory increase by foreign administrations in the charges to AT&T and the IRCs for transiting facilities overseas.*

4. Can we review this matter with our foreign correspondents in keeping with the relevant provisions of the cable construction and maintenance agreements, to which AT&T, the IRCs and the foreign correspondents are parties?

D. Impact Upon IRCs

1. Can we compare the proposed tariff rates with the contract rates to determine the percentage and dollar impacts upon each IRC on a route-by-route basis?

2. Will AT&T continue to assert these proposed increased changes against the IRCs efforts to reduce their Mainland-Hawaii leased channel rates?

---

*AT&T Reply Comments, dated July 8, 1975.

Your prompt attention to the foregoing would be appreciated.

Very truly yours,

Marc N. Epstein

Marc N. Epstein

MNE: db
cc: W. Randolph Young, Chief, Tariff Division
All parties to Docket No. 20452

Western Union International, Inc.
ONE WUI PLAZA · New York, N. Y. [illegible]

[illegible]

[illegible]
[illegible]

September 12, 1977

W. Randolph Young, Esq.
Chief, Tariff Division
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: AT&T Transmittal No. 12758;
AT&T Transmittal No. 5;
Docket No. 20452.

Dear Mr. Young:

Thank you for conducting the meeting of all parties to Docket No. 20452 at the Commission's offices on September 7, 1977. The patience and impartiality shown by you at the meeting was greatly appreciated by us.

We believe that meaningful settlement discussions can be conducted in this matter, and in furtherance of that objective, we have sent the enclosed letter proposal to AT&T, with copies to all other parties.

As you know, several years ago in the early stages of these proceedings, AT&T expressed the position (consistently advocated by the IRCs during the last three years) that the contract approach to the IRCs' tail and intercity facilities should be maintained in preference to the tariff approach. Also, AT&T and the IRCs are joint parties to the cable construction and maintenance agreements, which also provide for these auxiliary tail facilities to extend the jointly-owned cable circuits.

Now that the Common Carrier Bureau has indicated a willingness to permit the parties to discuss settlement, it is reasonable to assume that all of the parties will enter into such discussions. In view of AT&T's earlier position and its interrelationship with the IRCs in joint cable projects, as mentioned in the previous paragraph, it is reasonable to assume that AT&T will also enter into these settlement discussions.

Your continued interest and cooperation in this matter will, in our opinion, facilitate the desired settlement discussions.

Very truly yours,

Robert E. Conn

Robert E. Conn.

cc: All parties to
Docket No. 20452

RCA [illegible]

cc: Messrs. Murphy
Angliss
DeRosa
Hepburn
Luongo
✓Elardo
Schwamberger
R. Lewis

RCA

Ende
Vice President
evelopment

Mr. R. B. Nichols
Vice President
Long Lines Department
American Telephone and Telegraph Company
Bedminster, New Jersey 07921

September 12, 1977

Dear Mr. Nichols:

Subsequent to issuance of the Federal Communication Commissions Final Decision and Order in Docket 20452 (FCC 77-176 adopted March 8, 1977), AT&T filed on May 26, 1977 the Bell System Operating Companies Tariff F.C.C. No. 4 (BOC-4) and certain revisions to its Tariff F.C.C. No. 266. Tariff BOC-4, which contains proposed rates and regulations covering the furnishing of terrestrial facilities to the International Voice-Record Carriers (IRCs), is of particular concern since the facilities to be provided under that tariff have heretofore been provided to the IRCs by AT&T pursuant to a "General Agreement for Leasing of Circuits" dated April 15, 1968 and amendments thereto.

At a meeting held under the aegis of the Commission on September 7, 1977, RCA Globcom agreed to indicate those areas in which further discussion and negotiation among interested parties might fruitfully be undertaken. It is our position that such further discussion and negotiation could result in a revised tariff filing by AT&T which would enable the IRCs to obtain the facilities which they require to provide their public communications offerings at reasonable charges and would also enable AT&T to comply fully with the intent of the Commission as expressed in its March 8, Final Decision and Order, as well as in the Commission Staff letter of August 29, 1977 wherein it is asserted:

> "It is our view that the public interest is best served when the parties to a dispute are able to resolve differences they may have in face-to-face discussions. In order that any narrowing or eliminating of the disputed issues that may result from these discussions can be taken into account when the Commission rules on the outstanding petitions filed against the tariff filings, we believe a deferral of their effective date is in order."

The areas which we believe to be worthy of further discussion and negotiation, and which might provide the basis for a reasonable compromise are as follows:

1. The nature of the long standing arrangements between AT&T and the IRCs for facilities to connect their jointly owned cables and earth stations with central offices.
2. The basis of AT&T's rates and charges for entrance facilities to IRCs in light of the partnership arrangements and public interest considerations.
3. The levels of the rates and charges of AT&T for facilities, particularly those set forth in Bell System tariffs.
4. The technical and operational parameters of the facilities required by the IRCs.

As you know, the Commission, in its Order of June 9, 1977, recognized that "..... AT&T might provide the facilities in question to the IRCs on different terms and conditions with appropriate justification." You will recall that AT&T has acknowledged a certain uniqueness associated with the requirements of the IRCs and on this basis we believe that further discussion clearly is warranted.

In addition, there are certain technical distinctions which we believe must be examined in detail. As AT&T indicated in its Transmittal No. 5 of May 26, 1976, for example, it is necessary that entrance facilities meet CCITT operating and engineering standards. Additionally, the question of restoration was likewise raised by AT&T . Both of these areas deserve serious consideration.

RCA Globcom's ability to provide high quality international communications services at reasonable rates has been due, in part, to the cooperative efforts of AT&T. It is our feeling that the public interest in general and the particular interests of the users who rely upon the IRCs to meet their international communications requirements in an economical and efficient manner would be best served through future arrangements which preserve, as closely as possible, past arrangements and relationships. Accordingly, we believe that the public interest, as reflected in the Commission's decisions and orders herein, would be furthered by the conduct of informal discussion and negotiation. For your information, we are attaching hereto a list of those specific areas which provide an agenda for proposed meetings.

Very truly yours,

Asher H. Ende
hk
att.

Attachment

PROPOSED ITEMS FOR CONSIDERATION AND DISCUSSION

1. Charging principles

   a. Those which recognize and implement the cooperative arrangements to terminate traffic handled over jointly owned cables and earth stations, including IRUs.

   b. Application of charges set forth in the Bell System tariffs for all facilities acquired by the IRCs from AT&T in the contiguous states.

   c. Operating centers, earth stations and cableheads should be considered Category "A".

2. IRC facility requirements

   a. Groups and supergroups

   b. Sharing of facilities among IRCs

   c. Duration of requirements

      (i) Long term requirements .

      (ii) Temporary requirements

      (iii) Part time requirements

   d. Television requirements

3. Operational and technical differences between IRC entrance facilities and OCC facilities.

   a. CCITT technical standards

   b. International testing procedures

   c. Restoration requirements

   d. Compatibility of entrance facilities and local channels

File: Facilities Agreement
Inquiry

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

Telephone: (212) 363-5812

MARC N. EPSTEIN
Attorney

September 16, 1977

Mr. Richard B. Nichols
Vice President
American Telephone & Telegraph Co.
Room 4B 114
Bedminster, New Jersey 07921

Dear Mr. Nichols:

We are in receipt of your letter of September 1, 1977 which offers to defer the effective date of AT&T Tariff FCC No. 4 and the revisions to AT&T Tariff FCC No. 266 from September 16, 1977 to October 17, 1977. You have also offered to continue to provide the facilities covered by these tariffs at rates and on conditions equal to those set forth in the "General Agreement for Leasing of Circuits."

WUI has no objection to these proposals. However, this is without prejudice to our previously expressed legal position that the General Lease Agreement is still in effect. Since the subject facilities are not covered by tariff, they must by law, be provided pursuant to contract. WUI reserves all its legal rights to take appropriate action to protect its rights under the above agreement.

In addition, we again note that the timetable proposed by AT&T presents a major problem. WUI submits that the termination date of the General Lease Agreement must coincide with the effective date of the tariff. Thus, if the tariff is once again deferred, this time beyond October 17, 1977, the question of further extensions of the General Lease Agreement will once more arise.

Therefore, we urge that the termination date of the General Lease Agreement be modified, so that it will terminate either on October 17, 1977, or if the tariff is not then effective, on the effective date of the tariff.

Very truly yours,

Marc N. Epstein

Marc N. Epstein

MNE: db

JT. RPR

Conformed Copy

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

September 19, 1977

IN REPLY REFER TO:

9550

Mr. Daniel J. Culkin
Assistant Vice President
American Telephone and Telegraph Company
195 Broadway
New York, New York 10007

Dear Mr. Culkin:

As you are aware, the Commission presently has before it a number of tariffs filed by the Bell System which are scheduled to become effective between now and November 1, 1977, and to which petitions to suspend and/or reject have been filed. In several cases, we have granted extensions of time to petitioners or respondents to file pleadings in connection with the tariffs.

For administrative reasons, it is not possible for the Commission reasonably to deal with all the petitions prior to the scheduled effective date of the tariffs. Accordingly, we request a voluntary deferral of the effective dates of the following tariffs until the dates specified below:

Tariff	Scheduled Eff. Date	Requested Eff. Date
SCAN, Tr. #12783	October 13	October 28
Private Line Telegraph Other, Tr. #12791	October 25	October 28
Video, Series 7000, Tr. #12793	November 1	December 1
DDS, Tr. #12790	October 23	November 11
Entrance and Intercity Facil. for OCCs, Tr. #12758 and BOC Tr. #5	October 17	October 28

For the purposes of this deferral, the provisions of 47 CFR Part 61 are hereby waived.

We appreciate your cooperation in this matter.

Sincerely,

Walter Hinchman

Walter R. Hinchman
Chief, Common Carrier Bureau

File: Facilities Agreement
Inquiry

Docket # 20452

Gerald E. Murray
Attorney

AT&T
American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8555

September 20, 1977

CC: RTR
REC
MNE
KEM
DHT
PHS

Marc N. Epstein, Esq.
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Re: American Telephone and Telegraph Company
Transmittals No. 5 and 12758

Dear Mr. Epstein:

Receipt of your letter, dated September 12, 1977, is hereby acknowledged. After careful review of its contents, it appears to us that negotiations involving the International Record Carriers, American Telephone and Telegraph Company, and representatives of the Federal Communications Commission's Staff would not be appropriate in the light of the prevailing circumstances. In general, we believe that the issues you advert to have already been resolved, although we realize some of these issues, especially as related to rates, continue to be the subject of controversy in the minds of International Record Carriers.

As we have previously stated both at the September 7 meeting and in pleadings related to the transmittals in question, the actions that have been taken by us in the form of tariff filings and notices of cancellation of existing agreements, served on International Record Carriers pursuant to the terms of those agreements, have, in our view, been actions required by the Federal Communications Commission. We believe that in the absence of further and different Commission directions, we should not vary our actions.

The impact, if any, from foreign administrations and the impact, if any, upon rates of International Record Carriers from the tariff filings in question are subject matters which are not directly pertinent. The Commission's Final Decision and Order points out that neither of these subjects was dealt with in Docket 20452. In footnote 5, in that Final Decision and Order, for example, the Commission stated that any increase in charges by International

Record Carriers, as a result of actions taken in compliance with its directions, would be considered in the light of supporting economic material submitted by the International Record Carriers in support of a rate request. In addition, the Commission considered and rejected the claim of the International Record Carriers that the filing of tariffs would have a bearing on the relationship between International Record Carriers and foreign entities. (See para. 14.) In addition, the Commission noted that whether "indefeasible rights of user" should be considered for entrance-type facilities was not an issue before it in Docket 20452. (See footnote 3.)

In brief, insofar as the International Record Carriers seek to negotiate rates for facilities which would be lower than rates presently in existence for facilities furnished to other Other Common Carriers, it seems to us that the Commission's finding that the facilities in question are "essentially identical," and that continued provision of such facilities to International Record Carriers at charges lower than charges applicable to other Other Common Carriers is unjustified, precludes negotiation of rates.

Insofar as operational and technical problems related to the tariff filings in question have been raised by International Record Carriers, we believe that the problems have largely been resolved. Certainly, it is our belief that if other such problems arise in the future, they can also be resolved. As pointed out in Transmittal No. 5 and as explained by Mr. Wehmann at the September 7 meeting, Bell System Operating Companies' Tariff F.C.C. No. 4, filed in compliance with the Final Decision and Order in Docket No. 20452, was conceived and designed for the very purpose of recognizing the needs of an operational and technical nature associated with the provision of overseas communications services.

I am sending a copy of this letter to Mr. Randolph Young, Chief of the Tariff Division of the Common Carrier Bureau, and to the other International Record Carriers.

Very truly yours,

Gerald E. Murray

cc: Mr. Randolph Young
International Record Carriers

674

② File: Facilities Agmt. Inq.
#20452

Gerald E. Murray
Attorney

AT&T
American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8555

September 20, 1977

Mr. Joseph J. Jacobs
Vice President and General Attorney
ITT World Communications, Inc.
67 Broad Street
New York, New York 10004

Re: Your letter of September 8, 1977

Dear Mr. Jacobs:

By letter, dated September 1, 1977 from Mr. Richard B. Nichols, Vice President AT&T Long Lines, an offer was made to ITT World Communications, Inc. and to each of the other International Record Carriers with respect to the furnishing of facilities during the period to and including October 16, 1977. I believe that the terms of the offer are adequately described in the September 1, 1977 letter. I would prefer to rely on that letter for the description of the existing relationship between the parties. At the same time I believe that in your letter of September 8, 1977, you have described in somewhat different words what is conveyed in that letter. If I am incorrect in that understanding, it is our intent that the said September 1, 1977 letter be the controlling document. If you have any further questions, please do not hesitate to get in touch with me.

Very truly yours,

Gerald E. Murray

cc: Randolph Young (FCC, Francis J. [illegible]
De Rosa, Esq. (RCA), Robert Conn
Esq. (WUI), Roderick Mette, Esq.
(TRT), Clark McFadden, Esq. (French
Cable)

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

Telephone (212) 363-5812

MARC N. EPSTEIN
Attorney

September 26, 1977

Gerald E. Murray, Esq.
American Telephone and Telegraph
  Company
195 Broadway
New York, New York 10007

Re: AT&T Transmittal No. 12758;
AT&T Transmittal No. 5;
Docket No. 20452.

Dear Mr. Murray:

We have received your letter of September 20, 1977, in which you rejected WUI's proposals for settlement negotiations regarding tail and intercity facilities appended to our overseas circuits. The grounds for this rejection appear to be your reliance on the Commission's Order in Docket No. 20452.

However, the position reflected in your letter is at variance with the position espoused by the Staff of the Federal Communications Commission during the settlement meeting of September 7, 1977, held in Washington, D.C. At that meeting, the Staff stated that the Commission did not explicitly require the exact tariff AT&T filed. It required only the elimination of an alleged unlawful discrimination. Therefore, the Staff took the position that there may be room to compromise or narrow the issues.

In light of the foregoing, AT&T's attempt to place the onus of its unwillingness to discuss settlement upon the Commission is misplaced. Unless you have some valid, undisclosed reasons for rejecting settlement negotiations, we respectfully suggest that such negotiations commence.

Further, your refusal even to discuss the impact of the proposed tariff on transiting charges to foreign administrations, and the resulting increase in charges paid by the U.S. carriers for foreign transit facilities, evidences a failure to appreciate the significance of this issue. In its Memorandum, Order and Notice of Proposed Rulemaking released August 1, 1977 in Docket No. 18875, the Commission recognized the great significance of the cost of transit facilities. Attachment 2 to the above Order contains the following question: "Show the actual annual lease or capital acquisition cost of overseas transiting circuits on a country-by-country basis separately for each transmission facilities used or proposed to be used." Moreover, during the FCC/CEPT meeting in Docket No. 18875 on September 19, 1977, Commissioner Washburn expressed concern about the cost burden of transit facilities.

We wish, in particular, to discuss with AT&T whether the international record carriers, collectively or singly, can share U.S. transiting facilities with foreign administrations, as is currently the case under our 1968 agreements. If your proposed tariffs preclude such sharing, a question of unauthorized discontinuance of service arises. On the other hand, if such tariffs permit sharing between U.S. carriers and foreign administrations, your proposed rate increases (ranging over 100%) will directly impact foreign administrations, notwithstanding your protestations to the contrary.

Thus, the impact of the proposed tariffs on transiting facilities in the U.S. and abroad is certainly an issue worthy of discussion.

WUI still believes that the interest of the users of international services will best be served by settlement of the issues raised in our letter of September 12, 1977. Accordingly, we respectfully call upon AT&T at least to discuss these issues with the international record carriers.

Very truly yours,

Marc N. Epstein

MNE: db

cc: W. Randolph Young, Chief, Tariff Division,
Common Carrier Bureau

All parties to Docket No. 20452.

bcc: R. B. [illegible]

ITT World Communications Inc.

Joseph J. Jacobs
Vice President and
General Attorney

67 Broad Street
New York, N. Y. 10004
Telephone (212) 797-4825

October 3, 1977

Gerald E. Murray, Esq.
American Telephone and Telegraph Company
195 Broadway
New York, N.Y. 10007

Re: American Telephone and Telegraph Company - Transmittals No. 5 and 12758

Dear Mr. Murray:

This is to acknowledge receipt of your letter dated September 20, 1977 which attached a letter of the same date addressed to Marc N. Epstein, Esq., of Western Union International, Inc., wherein you stated that "it appears to us that negotiations involving the International Record Carriers [IRCs] , American Telephone and Telegraph Company [AT&T] and representatives of the Federal Communications Commission's Staff would not be appropriate in the light of the prevailing circumstances". In support of this position, you stated that the issues raised at the meeting between these parties on September 7, 1977 and the topics for discussion subsequently submitted to AT&T pursuant to the request of the Commission Staff have previously been resolved by the Commission's Final Decision and Order (FCC 77-176) in Docket No. 20452 released March 23, 1977.

In light of the Commission's apparent desire to have the interested parties in that Docket conduct meaningful negotiations for the purpose of resolving questions which both the IRCs and members of the Commission's Staff feel are unresolved, ITT World Communications Inc. (ITT Worldcom) deeply regrets this latest attempt by your company to interpret the meaning and application of the Commission's Order in a manner which would preclude such discussions. Indeed, the Commission has requested AT&T on two occasions to defer the effective date of the above-referenced Transmittals for purposes of negotiating the unresolved questions pertaining to entrance and intercity facilities and the terms and conditions under which they will be provided. And the fact that the Commission has on two occasions granted AT&T special permission to defer the effective date of the subject tariff revisions is clearly contrary to AT&T's apparent interpretation of the Order.

Consequently, ITT Worldcom strongly urges AT&T to reconsider its decision not to enter into fair and meaningful discussions for the resolution of these issues which affect all of the parties concerned.

Very truly yours,

Joseph J. Jacobs

cc: All Parties to Docket No. 20452
All Parties to Transmittals No. 5 and 12758
Randolph Young, Esq.
Lawrence Katz, Esq.
Daniel Harrold, Esq.

ITT World Communications Inc.

67 Broad Street
New York, N. Y. 10004
Telephone (212) 797-3300

October 3, 1977

Gerald E. Murray, Esq.
American Telephone and Telegraph Company
195 Broadway
New York, N.Y. 10007

Re: Entrance and Intercity Channel
Facilities

Dear Mr. Murray:

This is to acknowledge receipt of your letter addressed to Mr. Joseph J. Jacobs, Esq. dated September 20, 1977, wherein you stated that the letter of Richard B. Nichols dated September 1, 1977 would be controlling with regard to the furnishing of facilities to the International Record Carriers during the period up to and including October 16, 1977.

As discussed by telephone, this is to confirm your statement that the letter of Mr. Nichols merely incorporates the identical terms and conditions of the General Lease Agreement and any amendments thereto. In the absence of any statements to the contrary, ITT World Communications Inc. will act accordingly.

Very truly yours,

Randall B. Lowe
Attorney

cc: All Parties to Docket No. 20452
All Parties to Transmittals No. 5 and 12758
Randolph Young, Esq.
Lawrence Katz, Esq.
Daniel Harrold, Esq.

~~cc: KM~~
MNB

680

Richard B. Nichols
Vice President

AT&T Long Lines
Room 4B114
Bedminster, New Jersey 07921
Phone (201) 234-7711

October 6, 1977

REGISTERED MAIL

File: Facilities Agmt. Inq.
#20452

Mr. Robert E. Conn
Executive Vice President
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Dear Mr. Conn:

On May 27, 1977, AT&T gave notice of termination of the "General Agreement for Leasing of Circuits" (GLA) and the agreement concerning the lease of group and supergroup bandwidth facilities. These terminations were effective August 26, 1977. Since August 26, we have continued to provide facilities of the types contemplated by the GLA at rates and on conditions equal to those of the GLA and have offered to so provide facilities through and inclusive of October 16, 1977.

By letter of September 19, 1977, the Chief, Common Carrier Bureau requested that AT&T postpone the effective date of the Bell System Operating Companies Tariff F.C.C. No. 4 (BOC 4) and the revisions to AT&T Tariff F.C.C. No. 266 filed under Transmittal No. 12758 from October 17, 1977, to October 28, 1977. In accordance with that request, AT&T has agreed to the Commission's request and will seek special permission to defer the effective date of the Tariff F.C.C. No. 4 and the revisions to Tariff F.C.C. No. 266 from October 17, 1977 to October 28, 1977. We have also agreed to continue to provide interoperating center facilities to the International Record Carriers at rates and on conditions equal to those that had been established in the General Lease Agreement.

[redacted]

In light of the above, AT&T hereby gives notice that:

(1) it offers to continue to furnish voice grade, group and supergroup bandwidth facilities between your operating centers and overseas

satellite earth stations, cableheads and radio sites for the period to an including October 27, 1977, at rates and on conditions equal to those set forth in the aforementioned agreements. Fifty-six (56) Kbps Data Facilities between these locations will continue to be offered under AT&T Tariff F.C.C. No. 266; and

(2) it offers to continue to furnish facilities between your operating centers, for the period to and including October 27, 1977, at rates and on conditions equal to those set forth in the aforementioned agreements.

Please let us know whether the above-described offer is acceptable. If we do not hear from you by October 13, 1977, we will assume that it is and will act accordingly.

Should you have any questions regarding this matter, please contact Mr. Roger W. Hubbell on (201)234-7877.

Very truly yours,

Pole Edward Kraskin 515

CL

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

MARC N. EPSTEIN
Attorney

Telephone: (212) 363-5812

October 7, 1977

W. Randolph Young, Esq.
Chief, Tariff Division
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: AT&T Transmittal No. 12758;
AT&T Transmittal No. 5;
Docket No. 20452

Dear Mr. Young:

There has been no reply by American Telephone & Telegraph Company (AT&T) to our letter of September 26, 1977 concerning the issues for settlement discussions regarding tail and intercity facilities appended to our overseas circuits. In light of the public interest which would be served by settlement of this matter, and AT&T's refusal even to discuss the issues raised by the IRCs, WUI believes that the Commission should be aware of additional factors in support of the commencement of settlement negotiations.

Pursuant to paragraph 3(d) (3) of the General Agreement for Leasing of Circuits, dated May 9, 1968, WUI has the right to make available to foreign telecommunications entities, communication channels in the tail circuit and intercity facilities leased from AT&T. The proposed AT&T tariff does not permit the IRCs to continue to make these facilities available to the foreign administrations. No explanation has been given for the discontinuance of this offering to WUI, and, apparently AT&T is unwilling even to discuss this matter with us. This action is clearly in violation of Section 214(a) of the Communications Act which requires a certificate from the Commission prior to a carrier's discontinuance of an offering.

WUI has previously expressed concern about the lack of cost justification for the rate increase contained in the subject tariffs. AT&T has repeatedly refused to provide cost justification, to state when such material will be available, and refused to enter into any discussions with

WUI concerning this matter. The September 19, 1977 issue of Telecommunications Reports, at page 21, indicates that AT&T has filed a pleading stating that its OCC cost study will not be available prior to December, 1978. Thus, WUI's tail circuit and intercity facility costs will be increased by more than 100% without any indication that such an increase is at all related to the costs of these facilities.

In light of the foregoing, as well as prior material submitted by WUI and the other IRCs, the Commission is respectfully requested to convene a meeting to resolve the many issues in this Docket which are ripe for negotiation and eventual settlement.

Thank you for your consideration.

Respectfully submitted,

Marc N. Epstein

Marc N. Epstein

MNE: db

cc: All parties to Docket No. 20452.

File Facility Agreement
Inquiry

WUI | Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

MARC N. EPSTEIN
Attorney

Telephone (212) [illegible]

October 12, 1977

Mr. Richard B. Nichols
Vice President
American Telephone & Telegraph Co.
Room 4B 114
Bedminster, New Jersey 07921

Dear Mr. Nichols:

We are in receipt of your letter of October 6, 1977 which offers to defer the effective date of AT&T Tariff FCC No. 4 and the revisions to AT&T Tariff FCC No. 266 from October 17, 1977 to October 28, 1977. You have also offered to continue to provide the facilities covered by these tariffs at rates and on conditions equal to those set forth in the "General Agreement for Leasing of Circuits."

WUI has no objection to these proposals. However, this is without prejudice to our previously expressed legal position that the General Lease Agreement is still in effect. Since the subject facilities are not covered by tariff, they must by law, be provided pursuant to contract. WUI reserves all its legal rights to take appropriate action to protect its rights under the above agreement.

In addition, we again note that the timetable proposed by AT&T presents a major problem. WUI submits that the termination date of the General Lease Agreement must coincide with the effective date of the tariff. Thus, if the tariff is once again deferred, this time beyond October 28, 1977, the question of further extensions of the General Lease Agreement will once more arise.

Therefore, we urge that the termination date of the General Lease Agreement be modified, so that it will terminate either on October 28, 1977, or if the tariff is not then effective, on the effective date of the tariff.

Very truly yours,

Marc N. Epstein

MNE: db
bcc: REC, RM, MNE, PHS, TJJ, JT, RPR

AT&T
American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8155

C. E. Yates
Rate and Tariff Director

[illegible]
1977
[illegible]

October 12, 1977

Transmittal No. 9

Secretary
Federal Communications Commission
Washington, D. C. 20554

Attention: Common Carrier Bureau

The accompanying tariff material is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended, issued by the Bell System Operating Companies, and bearing Tariff F.C.C. No. 4, Overseas Connecting Facilities for Other Common Carriers, effective October 17, 1977. This material consists of tariff pages as follows:

Tariff F.C.C. No. 4 - 3rd Revised Page 1
Supplement No. 3

This filing further defers to October 28, 1977 the effective date of material originally scheduled to become effective August 25, 1977 (Transmittal No. 5, dated May 26, 1977) and previously deferred to October 17, 1977 (Transmittal No. 8, dated September 15, 1977).

This deferral is being made at the request of the Chief, Common Carrier Bureau and under authority granted in his letter, dated September 19, 1977, to Mr. D.J. Culkin, Assistant Vice President, American Telephone and Telegraph Company.

Acknowledgement and date of receipt of this filing are requested. A duplicate letter of transmittal is attached for this purpose.

All correspondence and inquiries in connection with this filing should be addressed to C.E. Yates, Rate and Tariff Director, Room No. 30-1570 American Telephone and Telegraph Company, 195 Broadway, New York, New York 10007.

C E Yates
KRP

Attachments:
  Duplicate Letter
  Tariff Pages
Copy of Letter and Pages sent to:
  Commerical Contractor
  Parties to Settlement Agreement, Docket 20099

RECEIVED
OCT 3
TARIFF DEPARTMENT

AMERICAN TELEPHONE AND TELEGRAPH COMPANY
195 BROADWAY
NEW YORK, N.Y. 10007

September 15, 1977

Attached are revised or additional pages for inclusion in the binder containing Bell System Department tariffs. This further defers the effective date of material originally scheduled to become effective August 25, 1977 (Transmittal No. 5, dated May 26, 1977) and previously deferred until September 16, 1977 (Transmittal No. 6, dated August 24, 1977) to October 17, 1977.

The effective date of the pages is September 16, 1977.

When these pages become effective, superseded pages should be removed.

Tariff F.C.C. No.	Check Sheet Revision No.	No. of Pages
4	2nd page 1	2

C. E. Yates
Rate and Tariff Director

NOTE: REQUESTS FOR ADDITIONAL OR REPLACEMENT TARIFF MATERIAL OR QUESTIONS REGARDING MATERIAL SHOULD BE MADE TO YOUR TARIFF DISTRIBUTION CENTER.

C. E. Yates
Rate and Tariff Director

AT&T
American Telephone and
Telegraph Company
195 Broadway
New York, N. Y. 10007
Phone (212) 393-8155

September 15, 1977

Transmittal No. 8

Secretary
Federal Communications Commission
Washington, D. C. 20554

Attention: Common Carrier Bureau

The following tariff material is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended, issued by the Bell System Operating Companies, and bearing Tariff F.C.C. No. 4, Overseas Connecting Facilities for Other Common Carriers, effective September 16, 1977. This material consists of revised tariff pages as follows:

Tariff F.C.C. No. 4 - 2nd Revised Page 1
Supplement No. 2

This filing, under authority of Special Permission No. 8[illegible]58 of the Federal Communications Commission, further defers the effective date of material originally scheduled to become effective August 25, 1977 (Transmittal No. 5, dated May 26, 1977) and previously deferred until September 16, 1977 (Transmittal No. 6, dated August 24, 1977) to October 17, 1977. This deferral is being made at the Commission's request.

Acknowledgement and date of receipt of this filing are requested. A duplicate letter of transmittal is attached for this purpose.

All correspondence and inquiries in connection with this filing should be addressed to C. E. Yates, Rate and Tariff Director, Room No. 30-1570 American Telephone and Telegraph Company, 195 Broadway, New York, New York 10007.

C E Yates
KRS

Attachments:
Duplicate Letter
Tariff Pages
Copy of Letter and Pages sent to:
Commercial Contractor
Parties to Settlement Agreement, Docket 20099

CG-REC

688

File: Facilities Agmt. Inq.
#20452

Gerald E. Murray
Attorney

AT&T

American Telephone and
Telegraph Company
195 Broadway
New York, N.Y. 10007
Phone (212) 393-8555

October 12, 1977

Marc N. Epstein, Esq.
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Re: American Telephone and Telegraph
Company Transmittal Nos. 5 and 12758

Dear Mr. Epstein:

This is in connection with your letter dated October 7, 1977, to W. Randolph Young, Esq., Chief, Tariff Division Common Carrier Bureau.

In your letter you stated that "The proposed AT&T tariff does not permit the IRCs to continue to make these facilities available to the foreign administrations." I believe that your statement is incorrect. If you will refer to Section 2.2.1 of Tariff F.C.C. No. 4, which was sent to the Commission by means of Transmittal No. 5, you will see that facilities will be offered under that tariff to be used by OCCs in ". . . furnishing such common carrier communications services as it may be authorized by the Federal Communications Commission to provide and for operational purposes directly related to the furnishing of such services of the OCC."

Further, as was made clear in our pleadings in connection with the various petitions to suspend or reject the tariff in question, one of the underlying premises followed in connection with the preparation of that tariff was our concern that no disruption of existing methods of furnishing facilities in connection with overseas communications occur. Consistent with that premise and in accordance with the above described provision of Bell Tariff F.C.C. No. 4, I believe your concern about the continued availability of facilities of the type previously offered in accordance with paras. 3(d)(3) of the General Lease Agreement is without foundation.

We continue to believe, as stated in my letter dated September 20, that it would not be appropriate in the light of the prevailing circumstances for negotiations to take place.

Very truly yours,

Gerald E. Murray

Gerald E. Murray

cc: Mr. W. Randolph Young
International Record Carriers

ITT World Communications Inc.

Joseph J. Jacobs
Vice President and
General Attorney

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-4825

October 13, 1977

Mr. Richard B. Nichols
Vice President
American Telephone and Telegraph Company
Room 4B-114
Bedminster, New Jersey 07921

Dear Mr. Nichols:

Your letter to Mr. Tower, dated October 6, 1977, has been referred to me for reply. ITT World Communications Inc. (ITT Worldcom) is willing to accept the provision of facilities contained in the General Lease Agreement between American Telephone and Telegraph Company and ITT Worldcom, as amended, under the identical terms and conditions specified therein up to and including October 28, 1977. This acceptance is made without prejudice to any other legal action we may wish to take in this matter either before the Commission or any court having jurisdiction in the premises.

Very truly yours,

Joseph J. Jacobs

cc: All parties to Docket No. 20452
All parties to Transmittals Nos. 5 and 12758
Randolph Young, Esq.
Lawrence Katz, Esq.
Daniel Harrold, Esq.

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 77-694
83459

In the Matter of)
)
)
) Docket No. 20452
Interconnection Facilities Provided)
to the International Record Carriers)
)
Bell System Operating Companies)
Proposed Tariff FCC No. 4, Overseas) Transmittal No. 5
Connecting Facilities for Other)
Common Carriers)
)
American Telephone and Telegraph)
Company, Long Lines Department) Transmittal No. 12758
Proposed Revision to Tariff FCC)
No. 266, Facilities for Other Common)
Carriers)

MEMORANDUM OPINION AND ORDER

Adopted: October 13, 1977 ; Released: October 25, 1977

By the Commission: Chairman Wiley not participating.

1. We have before us petitions for reconsideration of our Final Decision and Order (Decision) in the above-captioned proceeding, 63 FCC 2d 761 (1977), tariffs filed by AT&T in response to that Decision, and petitions objecting to those tariffs. The carriers who have filed pleadings against the tariffs or filed reconsideration petitions are ITT World Communications Inc. (ITT Worldcom), RCA Global Communications, Inc. (RCA Globcom), TRT Telecommunications Corp. (TRT) and Western Union International, Inc. (WUI).

BACKGROUND

2. Our Docket No. 20452 proceeding, designated for hearing at 52 FCC 2d 1014 (1975), was initiated against the background of the proceeding in Docket No. 20099, AT&T Offer of Facilities For Use by Other Common Carriers, 52 FCC 2d 727 (1975). At issue in Docket No. 20099, to which the International Record Carriers (IRCs) were parties, were the Bell System's interconnection responsibilities (provision of various kinds of interconnection facilities) to non-telephone company common carriers such as the Domestic Satellite Common Carriers (DSCCs), the Specialized Common Carriers (SCCs) and the IRCs. One result of the Docket No. 20099 proceeding was a negotiated settlement, signed by all parties including the IRCs, under which the Bell System companies were obligated to provide DSCCs, SCCs and IRCs, under certain Other Common Carrier (OCC) facility tariffs, facilities to be used within

cities and interconnected with interstate services. Another provision in the settlement provided that the Bell System companies would provide to the DSCCs and SCCs under other OCC facility tariffs entrance facilities (e.g., between earth stations and operating offices) and intercity facilities (e.g., between and among operating offices in different cities). The Settlement Agreement, however, included language that the IRCs had "unique needs" and that therefore the existing AT&T-IRC general leasing contracts providing certain entrance and intercity facilities to IRCs should be retained. 1/ Our order accepting, but not approving, the Docket No. 20099 Settlement Agreement placed the American Telephone and Telegraph Company (AT&T or Bell) and the IRCs on notice that we did not believe that the entrance and intercity facilities provided to IRCs under general leasing contracts should be treated any differently from similar facilities provided to DSCCs and SCCs under OCC facility tariffs. See 52 FCC 2d at 735. Indeed, it was evident from a reading of the tariffs and contracts that the contract facilities ("voice-grade circuits" in the terms of the contract) served the same communications function for the IRCs as the tariff facilities ("voice grade facilities" in the tariff langauge) did for the DSCCs and SCCs. See, e.g., 52 FCC 2d at 747 and AT&T-ITT Worldcom General Agreement for Leasing of Circuits, p. 2. That is, the entrance facilities in both cases permitted interconnection of either earth stations, microwave terminals, or cable heads to operating offices, and the intercity facilities in both cases permitted interconnections between and among operating offices in different cities. Despite this functional similarity the contracts provided preferential rate treatment to the IRCs and we were particularly concerned that there was no termination date specified in the contracts. Further, it was significant that there was no consistency in the manner in which AT&T provided facilities to the IRCs. The IRCs received other facilities from Bell, interconnection facilities to be used within cities, under the same OCC facility tariffs as did the DSCCs and SCCs. At the time Docket No. 20452 was instituted no justification had been provided to the Commission or its staff by either AT&T or the IRCs which justified this prima facie discrimination in the manner in which AT&T provided

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1/ The IRCs allege herein that it is significant that no DSCCs or SCCs with the exception of COMSAT General Corporation (COMSAT General) intervened in Docket No. 20452 to challenge the AT&T-IRC contracts as unlawfully discriminatory. At a September 7, 1977 public meeting, infra, n. 6, a SCC representative indicated that the IRCs insisted on the insertion of the "unique needs" term into the Settlement Agreement. Moreover, in any event, the DSCCs and SCCs are merely abiding by the Docket No. 20099 Settlement Agreement by not participating in Docket No. 20452. Therefore, we place no significance on non-participation by DSCCs and SCCs in Docket No. 20452.

facilities as between the IRCs and the DSCCs and SCCs. 2/ Therefore, we initiated Docket No. 20452 to give AT&T and the IRCs the opportunity to rebut the presumption of unlawful discrimination which then existed, *i.e.*, we intended to give them the opportunity to show that the contract facilities in question were "unlike" those provided to DSCCs and SCCs under OCC facility tariffs, or that if they were "like", then any discrimination in their manner of provision was just and reasonable. 3/ In this connection, we have repeatedly held that discriminations between "like services"must be justified if they are to be lawful under Section 202(a). See, *e.g.*, *Hi-Lo*, 55 FCC 2d 224 (1975), *on reconsideration*, 58 FCC 2d 362 (1976) and *DDS*, 62 FCC 2d 774 (1977), *reconsideration denied*, FCC 77-392, released June 20, 1977. In this case, not only was it incumbent on AT&T to justify the discrimination since it was the carrier whose conduct constituted a discrimination, but it was also incumbent on the IRCs as recipients of preferential treatment to show such treatment was justified.

3. The comments filed by AT&T and the IRCs in this proceeding were for the most part unresponsive to the above questions. The parties sought primarily to challenge the authority of the Commission to take any action at all with respect to the contracts or sought to introduce an issue not designated for hearing, namely, whether the IRCs should have indefeasible rights of use (IRUs) in the facilities in question. 4/ See, *e.g.*, WUI Comments, pp. 2-4, 7-9 and RCA Globcom Comments, pp. 2-5, 8-9. Where the comments did address the

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2/ Subsequent to the Docket No. 20099 Settlement the Chief, Common Carrier Bureau Bureau directed a June 6, 1974, letter to AT&T, with copies to the IRCs, which questioned the existence of these contracts in light of certain Commission actions. The letter stressed the desirability of the IRCs taking facilities pursuant to tariffs, rather than contracts, and directed AT&T to file appropriate tariffs covering the entrance and intercity facilities provided to IRCs. In reply, AT&T and the IRCs alleged basically that "unique" facts or circumstances existed in international communications with respect to these facilities, that the parties were satisfied with the long-standing contracts,or that joint industry/Commission meetings should be held to discuss the matter. While the requested meetings were never held, the IRCs were nonetheless given a full opportunity to support their position in the Docket No. 20452 proceeding.

3/ The IRCs use the word "unique" interchangeably with "unlike" in their filings in this proceeding. "Uniqueness" does not necessarily mean that a facility or service is "unlike" for the purposes of Section 202(a) of the Act. The "unique" character of a facility or service may be merely one of many factors to be considered in seeking to determine whether or not an unlawful discrimination exists. Further, we do not agree that the facilities in question are "unique."

4/ Since the proceeding was not designated as a Section 214 proceeding and the IRCs did not file any formal procedural motions to enlarge the issues, we held in our Decision that IRUs were not in issue. Moreover, IRUs have never been granted previously to any carriers,

(Footnote cont'd on following page.)

alleged "uniqueness" of the AT&T-IRC contract facilities they did so only in the most general terms. For example, the IRCs argued that because the facilities in question were connected to jointly-owned submarine cables that made them extensions of international cable facilities and therefore "unique" for that reason alone.5/ See, _e.g._, WUI Comments, p. 5 and ITT Worldcom Comments, p. 6. They also argued that because they do not generally compete with AT&T, DSCCs or SCCs, that fact alone made the contract facilities "unique." See, _e.g._, WUI Comments, p. 6 and RCA Globcom Comments, p. 6-7. Further, where it was argued that retention of the contracts was in the public interest, speculative allegations were made by IRCs that obtaining these facilities under OCC facility tariffs would adversely impact relations with foreign correspondents, adversely impact the quality of IRC services, or lead to rate increases for IRC services. See, _e.g._, RCA Globcom Comments, p. 8, and WUI Comments, p. 6-7. The most repeated argument made by the IRCs was that because AT&T and the IRCs were satisfied with the contracts, retention of such contracts served the public interest. Finally, AT&T stated it was also satisfied with the contracts but would be willing to provide facilities under tariff if so ordered.

4. Based upon the existence of a _prima facie_ discrimination, and in light of the unresponsive pleadings before us, which did not rebut the presumption that this discrimination was unlawful, we had no choice but to find that AT&T and the IRCs had not shown that the contract facilities were "unlike" those provided to DSCCs and SCCs under OCC facility tariffs. We had to further find that the _prima facie_ discrimination had not been shown to be just and reasonable. We thus held, 63 FCC 2d at 765:

> 13. The public interest requires the provision of the subject facilities to all entities on the same terms, absent some justification for the difference. We find that the contract terms and the terms of the tariff, while providing similar service, are different and that no justification has been shown for such a difference. We conclude upon consideration of this record that AT&T's continued provision of entrance and intercity facilities to the IRCs on different terms and conditions than they are supplied to the SCCs and DSCCs is an unjustified discrimination in the provision of like communications services in violation of Sections 201(b) and 202(a) of the Communications Act, 47 USC §§ 201(b), 202(a).

4/ (Footnote cont'd from previous page.) domestic or international, in domestic facilities such as the ones in issue herein. To do so would require a substantial change in Commission policy which should be considered only in the context of a general rulemaking proceeding so that all interested parties may participate. _See_ 63 FCC 2d at 763.

5/ _Supra_, n. 3.

> 14. The unjustified discrimination is that, under the contracts, AT&T provides the subject facilities to the IRCs on more favorable terms and conditions, including generally lower charges, than it affords the SCCs and DSCCs under tariff. Thus, AT&T is able, under the current circumstances, to charge one rate to those with whom it competes and another to those with whom it does not generally compete. The potential for prolonged unlawful discrimination against DSCCs and SCCs (and thus indirectly their respective customers) is enhanced by the fact that the contracts with the IRCs contain no set termination date. We are not persuaded by AT&T or the IRCs that the provision of the subject facilities to the IRCs is somehow "unique" and justifies their favored treatment. The facilities provided to the IRCs are essentially identical to those provided to COMSAT General, and the DSCCs and SCCs, and the mere fact that the IRCs may connect their facilities to jointly-owned overseas cable or earth station facilities, which may be governed by contract, is irrelevant. We are particularly concerned that the charges to the IRCs may not be compensatory and the IRCs may be recipients of subsidy from other facilities customers of Bell or from Bell's interstate service offerings. Further, we fail to see how the provision of domestic facilities to the IRCs under AT&T tariffs could have any bearing on the IRC relationship with foreign entities. (Footnotes omitted.)

5. Having found an unjustified discrimination , we did not order AT&T to undertake any particular means to eliminate the unjustified discrimination, but left that choice up to AT&T, e.g., it could expand the list of carriers subject to standard contracts or file appropriate tariffs. See 63 FCC 2d at 767, 769. According to the Commission's Decision such AT&T actions were to be taken on or before April 25, 1977. On April 15, 1977, AT&T requested additional time, until May 27, 1977, to implement the Commission's Decision. In its request for an extension of time, AT&T indicated it would utilize tariffs as the means to eliminate unjustified discriminations. By Order, FCC 77-273, adopted April 20, 1977 and released April 22, 1977, we granted AT&T the additional time. The IRCs filed petitions for reconsideration of our Decision and AT&T a petition for clarification, on April 25, 1977. By Order, FCC 77-361, adopted May 26, 1977, released June 9, 1977, we denied without prejudice RCA Globcom's request for stay of our Decision on the primary ground that AT&T's choice to file appropriate tariffs in compliance with our Decision would not result in any imminent irreparable injury to the IRCs because such tariffs had to be filed on not less than 90 days' notice to the public before they could become effective. We also indicated that since our Decision recognized that AT&T might provide the facilities in question to the IRCs on different terms and conditions than are applicable to facilities provided to DSCCs and SCCs with appropriate justification, 63 FCC 2d at 767, it is possible that many of the concerns the IRCs state in their petitions

for reconsideration of our Decision could be alleviated in light of the tariff revisions and justification filed. The primary reason for our position was that the IRC reconsideration petitions, filed before it was known how AT&T would comply with the Decision, contained much speculation regarding the remedy AT&T would choose to eliminate the unlawful discrimination. The IRCs assumed that AT&T would file tariffs and speculated about the content of such tariffs.

Therefore, we chose to wait until after AT&T initiated action to comply with our Decision before acting on such pleadings. On May 27, 1977, AT&T filed tariffs, discussed below, under which IRCs will be charged the higher OCC facility tariff rates for the facilities in question, rather than charging new tariff rates or including the DSCCs and SCCs within those carriers subject to standard contracts and the lower AT&T-IRC contract rates. 6/

THE CURRENT PETITIONS BEFORE US

6. Thus, before us for consideration are the April 25, 1977 petitions for reconsideration of RCA Globcom, WUI and ITT Worldcom and AT&T's petition for clarification. We also have before us the reply comments of WUI and ITT Worldcom filed on May 5, 1977. WUI, ITT Worldcom and RCA Globcom have filed petitions for rejection, and petitions for suspension and investigation, of the proposed tariffs filed by AT&T on May 27, 1977. TRT has also filed a petition for rejection. Bell has filed responsive pleadings to these petitions for suspension or rejection. Finally, WUI, RCA Globcom and ITT Worldcom all filed replies to AT&T's opposition to their rejection petitions. We consider AT&T's proposed tariff filings and pleadings with respect thereto separately at paras. 26-43 below. We consider petitions for reconsideration and clarification at paras. 7-25 hereinafter.

6/ See revisions to OCC Facility Tariff No. 266, AT&T Long Lines Transmittal No. 12758, to be effective on August 27, 1977, and revisions to Bell System Operating Companies Tariff FCC No. 4, AT&T Lone Lines, New Jersey Bell Telephone Company, and Southern Bell Telephone Company Transmittal No. 5, to be effective August 25, 1977. The effective date for these tariffs was deferred by AT&T until September 16, 1977, pursuant to request by the Common Carrier Bureau on June 29, 1977. See AT&T letter dated August 5, 1977, from C.E. Yates, AT&T Rate and Tariff Director, to Philip V. Permut, Acting Deputy Chief, Common Carrier Bureau. Pursuant to an exchange of letters between RCA Globcom, the Bureau, and AT&T the effective dates of the proposed tariffs were again deferred from September 16, 1977, until October 17, 1977. This deferral facilitated a public meeting on September 7, 1977 where certain issues concerning Docket No. 20452 and AT&T's proposed tariffs to implement our Decision were discussed. See September 9, 1977 letter from W.R. Young, Chief, Tariff Division to participants summarizing what was discussed at the public meeting. Finally, the effective dates of the tariffs were deferred again until October 28. 1977, following a request by the Chief, Common Carrier Bureau. See September 19, 1977, letter from Chief, Common Carrier Bureau to AT&T.

DISCUSSION - DOCKET NO. 20452

7. The IRCs in their reconsideration petitions, which were filed prior to submission of AT&T's proposed tariffs, argue for the retention of the AT&T-IRC general leasing contracts. 7/ Primarily, the IRCs contend that the record in Docket No. 20452 does not support a finding that AT&T's provision of intercity and entrance facilities by contract to the IRCs, but by tariff to OCCs, constitutes an unlawful discrimination under Section 202(a) of the Communications Act. 47 USC § 202(a). For example, ITT Worldcom argues that the conclusions reached by administrative agencies must be supported by substantial evidence, citing N.L.R.B. v. Columbian Enameling and Stamping Co., 306 U.S. 292, 300 (1939). General findings, ITT Worldcom alleges, are not sufficient to support an administrative ruling unless they are supported by subordinate findings of fact that have an adequate basis in the record, citing, among other cases, Florida v. U.S., 282 U.S. 194, 215 (1931). ITT Worldcom alleges that even if, with careful "parsing," the Commission's opinion could be read as including findings of the kind required by Sections 202(a) and 205, they are, on this record, "arbitrary and capricious." The findings, if any, ITT Worldcom alleges, are simply conclusory assertions which apply to the operating arrangements of AT&T and the IRCs and do not provide a "scintilla of support" for the Commission's Decision that these contracts are unjustly and unlawfully discriminatory vis-a-vis the SCCs, DSCCs and COMSAT General and that equality of treatment is in the public interest in the international market. ITT Worldcom argues that the Commission has simply decreed a predetermined result without adequate explanation. The IRCs further claim that their requests for conferences or hearings have been improperly denied on several occasions and that the notice and comment hearing procedures utilized in Docket No. 20452 have denied them a full opportunity for hearing. This, they claim, resulted in an inadequate factual record to support the Commission's "unfounded" and "general" conclusions. They request that the Commission's Decision be set aside, an evidentiary or conference type hearing be held, or an oral argument en banc be convened.

7/ We note that the IRCs' pleadings concern primarily entrance facilities. While they also argue in most cases for the retention of the contracts as they pertain to intercity facilities, few specific allegations, independent of arguments made with respect to entrance facilities, are made in support of that position. Thus, irrespective of what may be decided with respect to entrance facilities, the IRCs have made no showing to justify preferential rate treatment for intercity facilities. Once again it should be noted that at the time the IRCs file their petitions for reconsideration, the manner in which AT&T would comply with the Commission's Docket No. 20452 Decision, e.g., either filing appropriate tariffs containing existing or new rates or extending to all carriers the rates and conditions provided in the AT&T-IRC standard contracts, was speculative. The IRCs' reconsideration petitions assumed that AT&T would file tariffs and speculated about the content of those tariffs.

8. The IRCs argue that such an evidentiary hearing or conference-type proceeding would have established, among other things, that the "tail" circuits (the IRCs' term for entrance facilities) provided to the IRCs under contract are "unique", meet the "discrete" needs of the IRCs, and are therefore distinguishable from entrance facilities provided by AT&T to DSCCs and SCCs under OCC facility tariffs, *i.e.*, that the facilities provided to the IRCs and the SCCs and DSCCs, respectively, are not "like services" within the meaning of Section 202(a) so there can be no unlawful discrimination. The following arguments in the RCA Globcom petition for reconsideration, pp. 4-9, are representative of the IRCs' position regarding the alleged "uniqueness" of the facilities in issue. 8/ RCA Globcom alleges that neither the location of international cable and satellite facilities nor the cities which are established as international gateways are under the control of the IRCs. Under these circumstances, RCA Globcom alleges that the IRCs are not in a position to locate the overseas transmission facilities they must use in close proximity to their gateway operating centers to minimize extension costs. Further, RCA Globcom argues that the SCCs' and DSCCs' main requirements are for end links and local loops from their operating centers to customer locations. According to RCA Globcom, the IRCs' primary needs, on the other hand, are for entrance facilities between the IRC operating offices and the AT&T network, extensions to cable heads which are operated by AT&T for the cable owners including the IRCs, and extensions to the U.S. Intelsat earth stations which are operated by COMSAT for the earth station owners including the IRCs. RCA Globcom asserts that the IRC trunk extensions are embedded in composite, long-haul facilities which involve different interface parameters and operating and maintenance procedures than the customer loops provided to the SCCs and DSCCs under OCC facility tariffs. Also, RCA Globcom states that international satellite circuits entering the U.S. are not multiplexed into voice-grade circuits at the earth station but are transmitted through the AT&T network on a group or supergroup basis. It states further that

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8/ As noted previously, the IRC pleadings filed in the Docket No. 20452 hearing itself contained mostly generalized assertions of "uniqueness" unsupported by factual allegations. Their petitions for reconsideration are somewhat more specific. Thus, most of the allegations of the IRCs in their petitions are before us for the first time. None of the IRCs claim that the alleged "facts" they cite in their reconsideration petitions are new, were unknown to them, or otherwise could not be readily discovered for inclusion in their original Docket No. 20452 Comments. Nor is there any showing that the notice and comment procedure used in any way deprived the IRCs of a forum and full opportunity to present such "facts" to the Commission. We are at a loss to understand how the IRCs were deprived of due process by use of a procedure which is fully consistent with the Administrative Procedure Act and applicable case law for conduct of a rulemaking proceeding. *See* para. 11 below. We have, however, considered their new allegations on our own motion in order to make certain that we have all relevant facts before us. Thus, we are in effect considering *ab initio* the matters in issue in Docket No. 20452, thereby affording the IRCs still a second opportunity for hearing.

the IRCs' circuits are mixed in with telephone circuits in these groups and do not have a discrete identity until they reach the AT&T operating center. Under these circumstances, RCA Globcom asserts that the IRCs cannot piece out their circuits at the earth station and transmit them by some other means unless the necessary channel translating equipment is installed for their circuits, and possibly AT&T's as well, at additional cost to the carriers and to COMSAT which would have to provide matching channel bank equipment. It contends that should the existing contractual arrangements be replaced by OCC facility tariffs, this may well have to be the case.

9. Moreover, RCA Globcom contends that the IRCs need the substantial operating flexibility presently provided under the existing contracts which it alleges heretofore have not been provided to SCCs and DSCCs under AT&T's OCC facility tariffs. For example, it alleges that OCC facility tariffs do not specify a "fixed loss" (decrease in the strength of the signal) from one end of the circuit to the other whereas the circuits the IRCs now receive from AT&T under their contracts provide for a "fixed loss." It contends that "such non-standardization" would complicate maintenance and other operational functions in international carrier systems and alleges that in order to standardize loss characteristics, it would be necessary to incur expenditures for the equipment required. Furthermore, RCA Globcom argues that in order to isolate faults to a particular section of the overall international channel for which the IRC is responsible, testing is required between an IRC's central office and the cable head. On the other hand, under the "integrity of service" provision to the OCC facility tariffs, it argues that testing "could be prohibited" between the IRCs and the AT&T personnel who staff the cable heads and any other AT&T office in the link. Also, it argues that if the IRC entrance circuits were treated merely as tariffed facilities, the IRCs could be deprived of their present participation in joint planning efforts among the IRCs, AT&T and the foreign correspondents in determining how the system is configured and loaded.

10. RCA Globcom further contends that the IRC facilities in question have been specifically authorized by the Commission to carry only overseas -- as opposed to domestic -- traffic and that the IRCs do not generally compete directly either with AT&T or with the SCCs and DSCCs. RCA Globcom argues that the Commission fails to give any weight to this fact or the fact that the IRC facilities long predate the arrangements made for SCCs and DSCCs. Finally, it is argued by the IRCs that the Settlement Agreement in Docket No. 20099, _supra_, specifically noted the "unique needs of the (IRCs) between gateway cities and for entrance channels from cable heads and earth stations to those carriers' central offices in the metropolitan areas." _See_ 52 FCC 2d at 735.

11. Turning first to the IRC claims that they were denied an opportunity for hearing in Docket No. 20452, that the hearing record was inadequate, and that our findings were therefore not justified, we note it is well-established that notice and comment hearings are entirely appropriate and that trial-type evidentiary proceedings are not required in every case. See, *e.g.*, the extensive discussion in *Resale and Sharing of Common Carrier Services*, 60 FCC 2d 261, 325-29 (1976), and the cases cited therein. Moreover, as set forth above, the IRCs were on clear notice of the matters in issue in Docket No. 20452 including their and AT&T's burden to prove a *prima facie* discrimination was just and reasonable. Despite such notice their pleadings in the Docket No. 20452 proceeding were unresponsive and failed to rebut the presumption of unlawful discrimination that led to the initiation of Docket No. 20452. Thus, what is involved here is not any failure on the part of the Commission to afford the IRCs a hearing opportunity, but rather it is a failure of the IRCs themselves to take full advantage of an opportunity given to show that any rate preference in their favor was justified. 9/ Further, the failure of any of the IRCs to allege in either their Docket 20452 comments or reconsideration petitions relevant, specific facts and reasons for the necessity of an oral trial-type hearing, any necessity for cross-examination, any importance of witness credibility, any evidence that could only be presented orally, or, in general, any material facts which could not have been ascertained through use of the procedures employed herein, belies their claims that they were denied a full opportunity for hearing. *Cf.*, *RCA Global Communications, Inc.* v. *FCC et al*, Case No. 76-4054, Opinion released July 27, 1977, at p. 10 (2d Cir.). Moreover, as noted above, *supra*, n. 8, we have considered *ab initio* herein the matters at issue in Docket No. 20452, thereby affording the IRCs still a second opportunity for hearing. Accordingly, the IRCs' claim that they were denied an opportunity for hearing is without merit. In a related argument, ITT Worldcom alleges that there has been an unlawful "abrogation" of contract by the Commission and an unlawful "prescription" of tariff rates without giving the IRCs a "full opportunity for hearing" as required by Sections 203 and 205 of the Act. 47 USC §§ 203 and 205. For the reasons given above, the IRCs were afforded a "full opportunity for hearing," although they may not have fully availed themselves of that opportunity. As to ITT Worldcom's other allegations, we find that there was no "abrogation" of contract 10/ or "prescription" of tariff rates in Docket No. 20452 because

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9/ For this reason, assuming *arguendo* the record in Docket No. 20452 could be considered inadequate in any respect, the fault lies with the IRCs themselves, and not with the Commission's choice of hearing procedures.

10/ This is not to say the Commission does not have such abrogation authority. *See* 63 FCC 2d at 765-67.

as set forth at para. 5 above the choice of eliminating the unlawful discrimination was left to AT&T. Cf., National Association of Motor Bus Carriers v. FCC, 460 F. 2d 561 (1972). AT&T decided voluntarily, to terminate the AT&T-IRC general leasing contracts by giving notice of termination pursuant to the contract terms. See AT&T-ITT Worldcom General Agreement for Leasing of Circuits, p. 11. It subsequently filed proposed tariffs containing provisions and rates of its own choosing. Whether th remedy chosen by AT&T is an appropriate response is considered later herein.

12. We have already noted above the important functional similarity which exists between the contract facilities used by the IRCs and the tariff facilities used by the DSCCs and SCCs and why such facilities were "like" facilities for that reason. This holding is consistent with our Decision in DDS and Hi-Lo, supra. In both Hi-Lo and DDS we held that in determining whether or not two services were "like services" within the meaning of Section 202(a) of the Act, the communications function served by such services was of significant importance in making such determination. See 55 FCC at 230-31 and 62 FCC 2d at 795-97. We have also noted the importance of the communications function served by two services for determining whether or not services were "like services" in our recent Memorandum Opinion and Order rejecting in part AT&T's proposed WATS tariffs. 11/ See FCC 77-529 at paras. 42-47, released August 12, 1977.

13. We next consider the IRCs' claims in their reconsideration petitions that the facilties covered by the AT&T-IRC general leasing contracts are "unique" and thus unlike those facilities offered to DSCCs and SCCs under OCC facility tariffs. 12/ This, they claim, means that no discrimination exists within the meaning of Section 202(a) of the Act. Our Decision correctly held that the mere fact that the contract facilities were connected to jointly-owned submarine cables did not make them "unlike" as alleged by the IRCs. Indeed, facilities utilized in the domestic public switched network as well as in other domestic communication services can be similarly "connected" to the jointly-owned international

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11/ See also our Notice of Inquiry in Docket No. 21402, FCC 77-653, released September 26, 1977, wherein we are seeking to determine whether WATS and MTS services, respectively, are "like services." In this Inquiry we are requesting parties to submit comments on the establishment of general standards or criteria to aid in the determination of "like service" questions. See FCC 77-653 at para. 6. Presently, we properly make such determinations on a case-by-case basis as we have done in Docket No. 20452.

12/ Supra, n. 3.

cable facilities. Clearly, this does not make domestic public switched network facilities or facilities used in other domestic services "unique" international facilities. In this respect, the IRCs are silent as to why they agreed in Docket No. 20099 to take interconnection facilities for use within gateway cities pursuant to AT&T's OCC facility tariffs at the same rates charged DSCCs and SCCs. According to the logic of the IRC position, such facilities for use within gateway cities, as is the case with the entrance and intercity facilities subject to AT&T-IRC contracts, can also be "connected" to jointly-owned international submarine cables. Significantly, no such argument was made by the IRCs. We cannot agree that the fact that the subject facilities can be connected to submarine cables renders them in any way "unique" or "unlike" the facilities provided to the SCCs and DSCCs. The facilities are technically similar with apparently the same costs 13/ and the fact of their terminating in different facilities has no bearing on their being "like or unlike."

14. Moreover, the IRCs argue that the facilities in question are "unlike" OCC tariff facilities because they are engineered and operated to meet distinct international technical and operating requirements. However, the same argument can be made with respect to domestic facilities and services. For example, domestic public switched and private line networks are generally engineered and operated so that

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13/ The IRC comments and reconsideration petitions filed in the Docket No, 20452 proceeding are devoid of any **relevant factual** allegations of the costs incurred by AT&T in providing the IRCs the facilities in question, *i.e.*, the IRCs do not allege it is less costly for AT&T to provide them the contract facilities than it is to provide tariff facilities to DSCCs and SCCs and thus that the lower contact charges are justified. In the absence of such allegations, we assume that costs must be similar for contract and tariff facilities and thus that any rate treatment must be similar. In the September 7, 1977 public meeting, *supra*, n. 6, an AT&T representative indicated that the contract facilities provided to IRCs are physically and essentially the same as those provided to OCCs and that it could not cost justify a lower charge to the IRCs. See p. 2 of attachment to the Bureau's September 9, 1977 letter.

they can be utilized in connection with international services. We further note that even if there are technical or operating differences between two services such services can still be "like services" within the meaning of Section 202(a) of the Act. While considering whether or not AT&T's analog and digital private line services were "like services" for Section 202(a) purposes in DDS, supra, we held that there could be differences in the transmission, switching, or terminal technology used, or differences in the performance characteristics (i.e., level of service quality associated with a technology or facility) but such differences alone did not make AT&T's analog and digital private line services "unlike" for the purpose of Section 202(a). See 62 FCC 2d at 796-97. Thus, even if there are some technical and operational differences between entrance or intercity facilities provided to IRCs under the general leasing contracts vis-a-vis entrance or intercity OCC tariff facilities, such differences alone do not require a finding, as alleged by the IRCs, that the contract facilities are "unlike" those provided under tariff. In this respect, we concede that there appear to be some differences in technical and operating arrangements applicable to the subject facilities. For example, it appears as RCA Globcom alleges that a certain performance level may pertain in the contract that did not apply in the OCC facilities tariffs. 14/ Given the fact, however, that in DDS there were even greater differences in the respective technologies (analog and digital) employed to provide two services than the technical and operating differences alleged here by the IRCs and given the fact that such technological differences alone did not lead to a finding in DDS that such services were "unlike," it cannot be found here that the IRC allegations justify a finding that the contract facilities are "unlike" OCC tariff facilities. See 62 FCC 2d at 796-97. Moreover, the differences alleged by the IRCs do not alter the fact that the

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14/ The fact that IRCs have received in at least one case voice grade circuits on a group or supergroup basis is not a significant difference. DSCCs may obtain facilities on the same basis under OCC facilities tariffs. See, e.g., AT&T Tariff FCC No. 265, Section 3, original page 19. Further, we expect that Bell would be generally willing to meet a carrier's particular need for group or supergroup facilities under special construction provisions of applicable BOC facility tariffs. Also, it has provided group and supergroup facilities to Western Union Telegraph Company under the soon-to-be expired Western Union-AT&T contracts for many years.

communications function of the contract and tariff facilities is essentially the same, i.e., to meet the respective needs of the DSCCs, SCCs, and IRCs for connections between earth stations, microwave terminals, or cable heads and operating offices, and meet their respective needs for intercity connections between and among operating offices. This essential fact, which was the basis for our finding that the facilities in question were "like" facilities within the meaning of Section 202(a) of the Act (see para. 12 above), has not been rebutted by the IRCs.

15. The IRCs argue further that because IRCs are restricted by Section 222 of the Act, 47 USC § 222, to operations in gateway cities, while DSCCs and SCCs are not similarly restricted by Section 222, such circumstances make the contract facilities "unlike" those provided to DSCCs and SCCs under OCC facilities tariffs. 15/ This argument is without merit. The Commission's Section 214, 47 USC § 214, regulatory authority may be utilized so as to constitute a comparable restriction on DSCCs' and SCCs' operations in particular geographical areas. Moreover, it is common practice for domestic carriers to limit their operations to particular geographical areas based on economic and other factors.

Thus, if the IRC argument is taken to its logical extreme every carrier could claim it is entitled to special rate treatment from AT&T because its operations are limited to particular geographical areas. An additional circumstance cited by the IRCs in support of the alleged "uniqueness" of the contract facilities is that IRCs do not generally compete with AT&T, DSCCs and SCCs in the provision of domestic services. 16/ Thus, they claim, there can be no unlawful discrimination by AT&T against the IRCs (since the general leasing contracts for each IRC contain identical terms), or by AT&T as between the IRCs vis-a-vis DSCCs and SCCs. We disagree. As pointed out in our Decision, 63 FCC 2d at 765, the ultimate impact of any rate discrimination by AT&T in its provision of facilities to IRCs on the one hand, and to the DSCCs and SCCs on the other, could be on the rates paid by respective ratepayers of such carriers. Thus, e.g., where the rate discrimination is unfavorable to a DSCC or SCC with whom AT&T competes domestically, as is the case here, the potential exists for AT&T to gain an unfair competitive advantage over DSCCs and SCCs via its position as a monopoly supplier of facilities to other carriers, both domestic and international. See 63 FCC 2d at 765, fn. 15.

15/ We note that a proceeding is pending in Docket No. 19660, 54 FCC 2d 909 (1975), in which consideration is being given to expanding the number of IRC gateway cities.

16/ The IRCs also challenge our finding that COMSAT General and its MARISAT commercial customers may be disadvantaged by AT&T's provision of facilities to the IRCs, COMSAT General's competitors, on more favorable terms and conditions, including lower charges. See 63 FCC 2d at 765. They claim that the Commission's reliance on the potential for harm to COMSAT General is "mere conjecture and surmise" and as such is not entitled to evidentiary weight. ITT Worldcom and (Footnote cont'd on following page.)

More particularly, the potential exists that lower rates for facilities offered to IRCs could be cross-subsidized by revenues obtained from higher priced facilities provided to SCCs and DSCCs under tariff, or that AT&T's customer service offerings could provide such a cross-subsidization. Our "concerns" about possible unlawful cross-subsidization can hardly be considered improper, as alleged by the IRCs, in light of the extensive litigation in our Docket No. 18128 proceeding, 61 FCC 2d 587 (1977), on reconsideration, FCC 77-385, released June 13, 1977, further reconsideration pending, and DDS, supra, where we in fact found instances of such cross-subsidization. The effect of our Decision was a directive to AT&T to avoid the potential for this kind of unlawful discrimination by taking an appropriate action of its own choosing to treat IRCs, DSCCs and SCCs on the same basis when it provides them "like" entrance and intercity facilities. Based on the foregoing, we conclude that our Decision correctly treated the AT&T-IRC general leasing contract facilities as functionally "like" those facilities provided to DSCCs and SCCs under OCC facility tariffs (see para. 12 above). In any event, any discrimination is illegal per se under Section 202(a) unless it is justified and this has not been done (see below).

16. The IRCs argue in the alternative that even if the entrance and intercity facilities in question are "like" those facilities offered to DSCCs and SCCs under tariffs, any discrimination that may exist in terms of rates, terms, and conditions is just and reasonable within the meaning of Section 202(a). They contend such discrimination is just and reasonable because of the "uniqueness" of the facilities involved and because of the "unique" circumstances under which such facilities are offered to IRCs. See paras. 12-15 above for the IRCs' position. The IRCs also allege that if operating and technical arrangements, e.g., transmit and receive levels and fault isolation procedures, pertaining to the contract facilities are eliminated and comparable OCC facility tariff provisions are substituted in their place, the quality of the IRCs' services will suffer. Further, they allege that rates for IRC services will have to be increased due to the need to add additional equipment not provided for in OCC facility tariffs and as a result of the increased facility charges which must be paid to AT&T

16/ (Footnote cont'd from preceding page.) RCA Globcom further note that on October 3, 1975, AT&T forwarded a letter to RCA Globcom wherein AT&T stated that it will lease facilities for use in the conduct of maritime satellite service on the same basis as voice-grade facilities contained in the OCC facility tariffs. Consequently, ITT Worldcom and RCA Globcom claim that both COMSAT General and the IRCs obtain facilities from AT&T for the provision of MARISAT services on the same basis and therefore the Commission's concern is moot. We agree that it appears our particular concern with respect to MARISAT has been mooted by the AT&T letter, which post-dated the record comments filed in Docket No. 20452. However, the fact that the IRCs will receive domestic facilities from AT&T to use in connection with their MARISAT services under OCC facility tariffs again highlights the inconsistency in the manner in which the IRCs receive facilities from Bell. See para. 2 above.

under OCC facility tariffs. 17/

17. In addition to alleging possible adverse impact on IRC ratepayers, the IRCs allege that the Commission has ignored the impact its Decision may have on relationships of the IRCs and AT&T with foreign telecommunications entities and the "likely" reciprocal increase in foreign transiting charges that will impact U.S. carriers. For example, WUI argues that if the "transiting tail circuits" through the United States furnished to the foreign telecommunications entities principally by AT&T, citing, e.g., paras. 5(a)(b), TAT-6 Agreement, May 2, 1973, and to a lesser extent by the IRCs via the AT&T/WUI facilities contract, are furnished to such foreign entities under higher-priced OCC facility tariffs, there will be substantial increases in U.S. "transiting tail circuit" costs to the foreign entities. Reciprocally, it is claimed these foreign entities can be expected to increase their charges to AT&T and the IRCs for their "transiting tail circuits" across foreign countries to reach more distant foreign terminal countries. WUI claims that the Commission has not considered in the Decision AT&T's contractual obligations to furnish U.S. "transiting tail circuits" to foreign entities, which obligations are contained routinely in all cable construction agreements on file with the Commission, including the TAT-6 contract. Absent such consideration, WUI contends that the Commission could not even be "concerned" that the IRCs might be receiving a subsidy through their existing contract rates with AT&T. WUI also argues there might be a substantial negative net financial impact upon AT&T if it raises its charges to both the IRCs and the foreign entities for U.S. "tail" circuits, and thereby incurs higher reciprocal foreign transiting charges. Therefore, WUI concludes that increased charges by AT&T via OCC facility tariffs to the IRCs for "tail" circuits now provided under lower-priced contracts will inevitably lead to higher charges by AT&T to the foreign entities. WUI contends that the Commission has ordained this result by stating, 63 FCC 2d at 765, that "'[t]he public interest requires the provision of the subject facilities to all entities on the same terms, absent some justification for the difference.' " (emphasis by WUI). Finally, it is argued that the Decision, to the extent it may result in increased costs for international telecommunications facilities, is contrary

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17/ WUI estimates that the Decision will result in increased facility charges for the IRC industry of upwards of $4 million annually. RCA Globcom estimates the impact on it individually as $1.5-2.0 million annually in increased facility charges.

to our Order in Docket No. 18875, 30 FCC 2d 571, 60 FCC 2d 451 (1976), wherein the Commission has expressed its concern about costs incurred with respect to foreign telecommunications facilities as they might impact upon the U.S. carriers and their ratepayers. Thus, for the above reasons, the IRCs contend that any discrimination that may exist in the manner in which AT&T provides entrance and intercity facilities to the IRCs is just and reasonable.

18. The IRCs' reliance on the alleged "uniqueness" of the facilities AT&T provides them under general leasing contracts and their alleged "unique" status as international carriers as reasons for justifying any discrimination by AT&T in their favor is misplaced. Their additional allegations of dire consequences to the quality and cost of IRCs' services if they are required to obtain facilities from AT&T under OCC facilities tariffs are unsupported by record evidence. For the reasons stated at paras. 12-15 above, we cannot find that the IRCs as carriers, or the facilities in question, are so "unique" that any discrimination by AT&T in favor of the IRCs is *ipso facto* just and reasonable. Moreover, the dire consequences to the quality and cost of IRC services alleged by the IRCs as a result of our Decision are nothing more than speculation. As noted previously, these IRC allegations were made prior to the tariff filings made by AT&T. Thus, the IRCs were speculating at the time they filed their reconsideration petitions both that AT&T would file tariffs and about the content of such tariffs. They engaged in such speculation despite the fact that our Decision recognized that with appropriate justification AT&T could provide entrance and intercity facilities to IRCs at different rates, terms, and conditions than those facilities were provided to DSCCs and SCCs. *See* 63 FCC 2d at 767.

However, as it turns out, any possibility that technical and operating difficulties will arise, as speculated by the IRCs, is remote because the tariffs AT&T chose to file make no substantial changes in operating and technical arrangements which govern the manner in which entrance and intercity facilities are presently provided to IRCs. *See* para. 38 below. As noted above, and at para. 38 below, these differences alone do not make the facilities in question "unlike" those AT&T provides to DSCCs and SCCs. While AT&T proposes to charge the IRCs the higher OCC facility tariff rates, rather than charging all carriers including DSCCs and SCCs the lower AT&T contract rates or a totally new rate, we note that this was a remedy of AT&T's own choosing and not the Commission's. However, as noted at paragraph 40 below, AT&T will be required to fully justify in an investigation its various OCC facilities tariff charges. In regard to the IRC claim that our Decision requires an increase in rates for IRC services we note, as we did in our Decision, that any changes in rates by IRCs alleged to be a result of our Decision must be fully cost justified. *See* 63 FCC 2d at 765 and para. 40 below.

19. The IRCs also allege that any discrimination by AT&T in their favor is justified by the possibility that U.S. carriers' relations with foreign correspondents will be adversely impacted by our Decision. Our Decision did not see how the provision of domestic facilities to IRCs by AT&T could affect relations with foreign correspondents. *See* 63 FCC 2d at 765. The IRCs allege that any increase in facilities charges to the IRCs must also apply to the U.S. transiting facilities provided by AT&T to foreign corespondents. Such increase, they allege, will cause reciprocal increases for transiting facilities provided to U.S. carriers by foreign correspondents overseas. At the outset, we must stress our statutory responsibility to enforce Section 202(a) of the Act with respect to all carriers subject to our jurisdiction, international and domestic. Our statutory obligation to prevent unlawful discriminations under Section 202(a) with respect to *all* carriers is not circumscribed by the fact that there may be foreign entities not subject to our jurisdiction which may be directly or indirectly affected by our actions. *Cf.*, *Transpac-II*, 57 FCC 2d 1103, 1107-08 (1976). Moreover, assuming *arguendo* that AT&T may be obligated by provisions of cable agreements to charge IRCs and foreign correspondents the same facilities charges as alleged, once again we note that such charges by AT&T are a result of its own choosing and not the Commission's. In complying with our Decision, AT&T was free to choose a method of eliminating unlawful discrimination which would have resulted in lower charges to IRCs, DSCCs and SCCs (and foreign correspondents if it is required to charge them rates equivalent to IRC rates). In this regard, we are not aware of any instance where AT&T has undertaken steps to change transiting charges paid by foreign correspondents. 18/ In view of the foregoing, we cannot find that the discrimination in the IRCs' favor has been justified and we reaffirm our finding that AT&T must remove the existing discrimination.

18/ We stated in our Decision that AT&T must provide facilities "to all entities on the same terms, absent some justification for the difference. " *See* 63 FCC 2d at 765. Inasmuch as the transiting facilities provided by AT&T to foreign correspondents were not before us in Docket No. 20452 we take no position on whether or not AT&T may provide such facilities on a different basis to foreign correspondents. However, if different charges are made, we will expect AT&T to be able to justify such differences.

20. Unlike the IRCs, AT&T does not challenge our findings that an unjustified discrimination exists and that it must take appropriate steps to eliminate it. In its petition for clarification AT&T indicates that it will file appropriate tariffs to implement the Commission's Decision. These proposed tariffs have now been filed and are discussed below. However, AT&T states further in its petition that its analysis has disclosed a number of "unique situations" which may not have been contemplated by the Commission when it issued its Decision and which, in AT&T's opinion, may not be appropriate for inclusion in the tariffs AT&T files to comply with the Decision. AT&T has taken no action on these "unique situations" pending our ruling on its petition. AT&T claims certain facilities are furnished to specific IRCs which, for varying reasons, are "unlike" any facilities furnished to SCCs and DSCCs, and were not within the scope of our Decision herein.

21. Specifically, AT&T currently furnishes one IRC with one telegraph grade circuit between the IRC's Miami gateway and the submarine cable station at Key West, Florida, where it is connected to facilities of the Cuban American Telephone Company and is extended to Cuba. AT&T states that this facility was provided since it was the only feasible means to satisfy an IRC requirement for a private line telegraph channel to Cuba to fulfill an order from a foreign government. AT&T furnishes another IRC with one group bandwidth (48 kHz) facility between the IRC's operating center in Washington, D. C. and the INTELSAT System earth station in Etam, West Virginia, with interfaces at high frequency in connection with a unique NASA overseas service provided by the IRC. AT&T states that at the time it was installed the IRC's requirement could not be met in any other practical manner. AT&T indicates that it does not propose to offer telegraph grade and group high frequency interface facilities for wideband facilities to the IRCs in the future and that neither is offered to SCCs or DSCCs. It requests clarification as to whether it may continue providing the limited telegraph grade and group high frequency facilities that are currently provided under existing contract arrangements with the IRCs concerned.

22. AT&T states that it also provides facilities to the IRCs in connection with restoration of services in the event of a failure in a trans-oceanic submarine cable system, or in an INTELSAT satellite systems path. According to AT&T, these facilities are provided in accordance with restoration plans developed with and agreed to by the participating U.S. international carriers, COMSAT and foreign correspondents and such plans have been filed with the Commission. They involve the taking of actions under certain contingencies which are not included in the terms and conditions offered in connection with furnishing facilities under tariffs to SCCs and DSCCs. When a failure occurs in an international facility, these restoration arrangements involve temporarily rerouting circuits in an interrupted system to preassigned facilities extending to another cablehead or to another earth station. AT&T states its belief that the Decision does not relate to the furnishing of facilities in accordance with these international restoration plans because the circumstances are dissimilar to any involving SCCs and DSCCs, and requests the Commission to clarify this point.

23. Finally, AT&T, pursuant to contract, currently provides three IRCs with television transmission facilities in New York City and San Francisco and between those cities and INTELSAT System earth stations. According to AT&T such facilities are used by the IRCs in providing overseas television service which is offered by the IRCs and AT&T, pursuant to Commission Order, 18 FCC 2d 402 (1969), on a weekly rotational basis under a joint tariff. The intercity facilities furnished to the IRCs 19/ are being provided on an occasional use basis at charges based on an initial 10 minute minimum rate plus an "each additional minute" charge. If intercity television facilities were provided under OCC facility tariffs, they would be provided on a monthly basis. Accordingly, AT&T requests clarification as to whether AT&T may, in compliance with the Commission's Decision, provide intercity television facilities to the IRCs on the above-described part-time basis while making similar facilities available to other carriers only on a full-time, monthly basis in light of the asserted facts that: "(i) the contractual arrangements for TV facilities were not considered in this proceeding; (ii) overseas television service is provided under an arrangement whereby each IRC provides service only one week out of four; and (iii) the offering that is made to the public by AT&T and the IRCs under the Joint Overseas Television Service Tariff (FCC No. 2) is also on an occasional part-time basis."

24. As noted previously, the facilities at issue in Docket No. 20452 were provided under the identical general leasing contracts AT&T has with each IRC. We did not intend to consider the appropriateness of AT&T's other contractual arrangements with individual IRCs, or with the IRCs jointly, in Docket No. 20452. However, the instances raised by AT&T, and any other contractual arrangements it may presently have with IRCs, must now be considered. Therefore, we will initiate a proceeding in the near future to consider those other contractual arrangements. In that proceeding, as was the case in Docket No. 20452, AT&T and the IRCs will have a reasonable opportunity to justify any preferential treatment given by AT&T to IRCs vis-a-vis SCCs and DSCCs and to justify their claim that no unreasonable discrimination exists.

25. In summary, we have shown above the reasons why our Docket No. 20452 Decision must be affirmed. We turn next to the proposed tariffs filed by AT&T pursuant to our Docket No. 20452 Decision and the pleadings filed with respect thereto.

19/ According to AT&T, the local channel facilities furnished the IRCs are physically the same as those offered by Bell System associated companies in the OCC facility tariffs and they are not, therefore, the subject of AT&T's request for clarification.

AT&T's PROPOSED TARIFFS

26. Although we discuss AT&T's proposed tariffs in further detail below, we believe a brief summary would be useful. As noted above, supra, n.6, on May 26, 1977, AT&T filed Bell System Operating Companies' (BOC) Tariff FCC No. 4, which proposes to offer the IRCs "Overseas Connecting Facilities" at the same tariff rates applicable to entrance facilities provided to DSCCs and SCCs under other OCC facilities tariffs. See BOC Transmittal No. 5, pp. 1-2. The rates paid by DSCCs or SCCs for entrance facilities and which would also be paid by the IRCs under the proposed tariff, are contained in the applicable Bell System operating company's tariff in a particular state. The various facilities rates contained in these OCC tariffs were set by AT&T at a level equal to each state's private line rates with substantial discounts for intraexchange and interexchange facilities up to 40 miles. Thus, AT&T cross-references state private line tariffs to establish OCC facilities rates which would include the proposed charges to the IRCs. The "Overseas Connecting Facility" tariff is intended by AT&T to be the "direct equivalent" of the entrance facilities currently provided to the IRCs pursuant to the general leasing contracts. AT&T indicates that no "essential change" in the manner in which such entrance facilities are presently furnished to IRCs (i.e., in terms of engineering, operating practices, testing, etc.) will result except as to the charges to be paid. See BOC Transmittal No. 5, p. 2. The AT&T tariff filing also provides that the intercity facilities in question will be provided to the IRCs pursuant to the same tariff rates charged to SCCs and DSCCs under existing AT&T Tariff FCC No. 266, the OCC facility tariff applicable to intercity facilities. We note that Tariff FCC No. 266 cross-references rates contained in AT&T Tariff FCC No. 260, AT&T's interstate customer private line tariff. The manner in which AT&T develops charges for entrance and intercity facilities provided under OCC facility tariffs, i.e., basically by cross-referencing intrastate or other interstate tariffs, is in accordance with provisions of the Settlement Agreement in Docket No. 20099, supra. The Settlement Agreement recognized that OCC facility tariff rates would not be cost justified until some future date and that until such justification was provided interim negotiated rates would apply. By letter dated May 26, 1977, AT&T indicated it would endeavor to file full justification for OCC tariff rates on or before December 1, 1978. The Commission has granted waivers of Section 61.38 (which requires cost justification) and 61.74 (which prohibits cross-referencing to other tariffs) of the Rules, 47 CFR §§ 61.38 and 61.74, to facilitate implementation of the Settlement Agreement. See 52 FCC 2d at 737. These rules were also waived for AT&T's instant tariff filing. See Common Carrier

Bureau Special Permission No. 8372. Upon the effectiveness of the proposed tariffs the existing general leasing contracts will terminate. AT&T has already given such termination notice pursuant to the contract notice provisions. As noted previously, supra, n. 6, AT&T has deferred the effective date of these proposed tariffs from August 25, 1977 until October 28, 1977.

27. WUI, RCA Globcom, ITT Worldcom and TRT all seek rejection of AT&T's proposed tariff filing. ITT Worldcom alleges that before the tariffs became effective it should first be permitted the opportunity to purchase IRUs in the subject facilities in accordance with previous Commission policies which it claims support ownership interests by carriers in various facilities as a means of reducing charges to the public. Secondly, ITT Worldcom alleges that AT&T's tariff filing conflicts with the Commission's Docket No. 20452 Decision and certain Commission Rules because: (a) AT&T did not submit the appropriate cost justification required by Section 61.38 of the Commission's Rules, 47 CFR § 61.38; and (b) because the proposed tariff filing conflicts with Sections 61.74 and 61.55 of the Commission's Rules, 47 CFR §§ 61.55 and 61.74, which require clarity in tariffs and prohibit cross-referencing of rates and charges between different tariffs. Finally, it contends that Commission acceptance of AT&T's tariff proposal prior to a ruling on ITT Worldcom's petition for reconsideration of the Docket No. 20452 Decision would constitute a denial of procedural due process. 20/ After rejecting the tariffs, ITT Worldcom argues that the Commission should institute an expedited hearing into whether the facilities provided to the IRCs, SCCs and DSCCs are "like services;" whether any discrimination that may exist is just and reasonable; whether AT&T's proposed tariff provisions are just and reasonable; and whether the IRCs should be given IRUs in the subject facilities.

28. TRT seeks rejection on the grounds that: (a) AT&T's proposed tariff charges have not been cost justified by Section 61.38 or other data; (b) the proposed rates violate Section 202(a) of the Act because, due to cross-referencing of tariffs, such rates are the same rates charged to the public for AT&T intrastate and interstate private line services; (c) the charges to the IRCs have been developed on the basis of higher cost, customer private line services on low density routes, rather than on cost, transmission, and route density charcteristics peculiar to the IRCs; and (d) the proposed charges have not been shown to be just and reasonable under Section 201(b) of the Act, 47 USC § 201(b). TRT concludes that retention of the contract rates pending submission of cost information by AT&T is desirable, rather than allowing AT&T to implement "patently" unlawful rates without any justification.

20/ This argument is mooted by our disposition of the reconsideration petitions herein, paras. 7-25 above.

29. RCA Globcom seeks rejection primarily on the grounds that: (a) there has been no showing that the tariff scheme proposed by AT&T to replace the intercarrier contracts is just and reasonable in accordance with Section 201(b) of the Act in view of the "special requirements," e.g., in operating practices and quality of service, applicable to the international entrance facilities in issue; (b) that the tariff will result in unlawfully discriminatory charging provisions for identical facilities depending upon whether such facilities are taken on the East coast or the West coast contrary to Section 202(a) of the Act; 21/ (c) that the tariff will result in a "discontinuance, reduction, or impairment of service" previously provided, i.e., a withdrawal of temporary circuits for short term use and groups or supergroups of voice grade facilities, without appropriate Section 214(a), 47 USC § 214(a), approval; (d) that the IRCs' charges to the public will have to be increased if the tariff filing becomes effective; and (e) that the tariff should not be allowed to become effective until such time as the Commission rules on the pending reconsideration requests before it and addresses in appropriate proceedings the outstanding questions of law and fact raised in those pleadings. 22/

30. Finally, WUI argues that the tariff filing should be rejected as being prima facie unlawful pursuant to: (a) the "prohibition" against "ex parte" contacts in Home Box Office, Inc. v. FCC, Case No. 75-1280 (D.C. Cir., March 25, 1977); (b) the Commission's Designation Order in Docket No. 20452 which classified the proceeding as a "restricted rulemaking proceeding" and stated that the Commission's Decision therein "will be based on matters submitted for or incorporated into the record"; and (c) Section 201(b) of the Act. In support of grounds (a) and (b) above WUI alleges "prejudgment" by the Commission and its staff. It alleges that although on several occasions the IRCs were denied conferences and hearings the Bureau staff held at least four "ex parte meetings" with AT&T on March 24, 1977, March 31, 1977, April 20, 1977 and May 18, 1977, subsequent to the Docket No. 20452 Decision but prior to the filing of the subject tariffs. 28/

21/ Different OCC facility tariff charges would apply depending on the geographical location of the particular facility. This is a consequence of the OCC facility tariffs filed pursuant to provisions of the Docket No. 20099 Settlement Agreement. According to RCA Globcom the percentage increase in its annual charges under the proposed tariff varies from 49.9% for facilities obtained from AT&T Long Lines to 326.7% for facilities obtained from Pacific Telephone and Telegraph. See RCA Globcom Rejection Petition, pp. 7-8. RCA Globcom also alleges, because AT&T cross-references to interstate private line tariffs, the proposed rates are improper "intrastate" charges for international service.

22/ Supra, n. 20.

23/ A detailed, 5-page summary of the matters discussed at these staff and AT&T meetings, and the details of another contact initiated on May 26, (Footnote cont'd on following page.)

WUI contends that there must have been more contacts by AT&T with the staff than the four reported by the Bureau (in particular, on the foreign transiting issue, see para. 11 above), that the four reported contacts were probably incomplete as to what occurred, that such contacts were prohibited in the context and background of Docket No. 20452, and that the Bureau's June 24, 1977 letter describing these contacts does not remove the "taint" on the outcome of any Commission determinations on AT&T's tariff filings, citing *Home Box Office*, *supra*, in support of its position. [24] WUI further claims, citing a Commission statement that it would consider pending reconsideration pleadings in light of any tariffs filed by AT&T, FCC 77-361 at para. 36, released June 9, 1977, that the AT&T tariff filing is an integral part of the restricted rulemaking proceeding in Docket No. 20452. Thus, WUI claims any contacts by AT&T with the staff relating to the tariffs which were subsequently filed were subject to the *ex parte* rules, 47 CFR §§ 1.1200 *et seq*. WUI concludes that the failure of the staff and AT&T to follow the *ex parte* rules, which generally prohibit such contacts and require written public reports to the Executive Director if such contacts are made, calls in question the fairness of "this proceeding" and that only tariff rejection, coupled with appropriate evidentiary hearings, can remove the "taint."

31. WUI further requests rejection on the grounds that: (a) AT&T did not provide Section 61.38 cost support data to justify the filed rates; (b) AT&T improperly cross-references "intrastate" private line rates into a "foreign" tariff offering; (c) such "intrastate" private line rates are higher than comparable interstate AT&T Long Lines charges; and (d) proposed tariff provision Section 2.1.4, which provides facilities will be available to IRCs only after provision has been made for exchange and MTS service, relegates IRC services to "second class" status. *See* WUI Petition for Rejection, pp. 8-10. WUI also asserts that IRCs would have to raise rates for their own services if the AT&T tariffs are effective and that, under such circumstances, a hearing and accounting order would not protect the IRCs against business losses on Mainland/Hawaii routes where AT&T is the main competitor.

32. WUI, RCA Globcom and ITT Worldcom also filed in the alternative petitions for suspension, investigation, and accounting orders. Since these petitions generally repeat arguments made in their rejection petitions, we see no need to summarize them.

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[23] (Footnote cont'd from preceding page) 1977, by Mr. Robert Conn, a Vice President of WUI, were provided to WUI pursuant to its Freedom of Information Act request of June 10, 1977. *See* June 24, 1977, letter from Philip V. Permut, Acting Deputy Chief, Common Carrier Bureau to Marc N. Epstein, Esq., counsel for WUI.

[24] In *Home Box Office*, the D. C. Circuit Court of Appeals overturned the Commission's pay cable rules due to *ex parte* contacts with the Commission staff in a non-restricted rulemaking proceeding, which the Court determined to be a denial of due process. The *Home Box Office* decision has been appealed to the U.S. Supreme Court by the Commission. The Commission's petition for certiori was recently denied by the Supreme Court.

33. AT&T opposes the IRCs' requests for tariff rejection, or in the alternative tariff suspension and investigation. It argues generally that its proposed tariffs comply with the Commission's Decision in Docket No. 20452 by eliminating the unjustified discrimination found to exist by the Commission in the way AT&T provided "like" facilities to the IRCs and the DSCCs and SCCs. In response to IRC allegations, AT&T contends that it is not required to file Section 61.38 cost justification for its proposed tariffs at this time. It alleges basically that the result of the Decision and AT&T's response thereto is that the provisions of the Settlement Agreement in Docket No. 20099, which was signed by AT&T, DSCCs, SCCs and the IRCs, govern the charges applicable to all facilities offerings to OCCs, including the subject facilities. Such charges, AT&T contends, are negotiated interim rates which the signing parties, including the IRCs, agreed would be effective until cost justified rates replace them. AT&T also points out that this Agreement expressly permits cross-referencing to intrastate private line tariffs and to AT&T Tariff FCC No. 260 as a means to establish the basis for the OCC facilities charges challenged by the IRCs. In this connection, AT&T states that IRC allegations that AT&T is charging the IRCs improper "intrastate" private line rates is erroneous, because all OCC facilities rates are contained in interstate tariffs on file with the Commission. As noted above, AT&T states it will file full cost and other justification for OCC facilities rates on or before December 1, 1978. Further, to the extent the IRCs challenge the rates and rate structures of AT&T Tariff FCC No. 260 (see para. 29 above) which is cross-referenced by AT&T's OCC facilities Tariff FCC No. 266, AT&T argues that its Tariff No. 260 is already under investigation in Docket No. 20814, *MPL*, 59 FCC 2d 428 (1976). Thus, basically, AT&T contends that due to the Settlement Agreement in Docket No. 20099, other pending proceedings, and its plan to file cost justification for OCC facilities tariffs in the near future, it would be premature to require it now to file cost justification for the tariff filings in question. Therefore, it concludes that rejection, or suspension and investigation, on the ground that it did not file such justification, is unwarranted. 25/

34. AT&T further argues that other than an increase in facilities charges to IRCs "no essential change" in the manner in which the entrance and intercity facilities in question are presently provided to the IRCs under the general leasing contracts, *i.e.*, operating and technical arrangements, will result from its proposed tariff filing. Thus, AT&T

25/ AT&T also notes that it was granted a waiver of Sections 61.38 and 61.74 of the Rules by the Bureau with respect to the instant filing. We have considered on our own motion the Bureau's grant of AT&T's May 24, 1977 Application No. 8, request for waiver, and find such grant consistent with our Docket No. 20452 Decision in that it facilitated the prompt elimination of the unjustified discrimination found therein. *See* para. 37 below. However, such a waiver does not preclude the Commission from investigating the reasonableness of the tariffs involved.

indicates that it has retained such arrangements as meet International Telegraph and Telephone Consultative Committee (CCITT) standards. In response to RCA Globcom's allegation, described at para. 29 above, that AT&T, in violation of Section 214(a), 47 USC § 214(a), is terminating the availability of voice circuits in groups and supergroups to IRCs, AT&T argues that with the exception of group facilities used in connection with wide band data service and the 48 Khz facility referred to at para. 21 above, no IRC has ordered such facilities. Moreover, AT&T argues that its tariff filings will offer 50 and 56 kilobit data service for the IRCs. Thus, AT&T claims that the "effect" of its actions will be that no facility will be withdrawn from the IRCs as result of the termination of the general leasing contracts. RCA Globcom also alleges, para. 29 above, that AT&T's proposed tariffs do not provide for a "fixed loss" to insure high quality service. AT&T replies that the proposed tariffs provide for a "fixed level" which is equivalent to a "fixed loss," that its representatives have met with the IRCs to explain this, and that its engineering representatives are looking into RCA Globcom's further concerns about the kind of channel conditioning which will be provided to assure quality performance of facilities. RCA Globcom further alleges that AT&T has discontinued service, previously offered by contract, without Section 214(a) authority in that it does not provide for a temporary rate of less than one month in the proposed tariff filing. AT&T replies that a change in regulation which results in an increased rate, as is the case here, does not constitute an elimination of service within the meaning of Section 214 of the Act, citing In the Manner of AT&T Long Lines Termination of Telpak, FCC 77-384 at para. 11, released June 13, 1977. AT&T states that the one month service rate set forth in the proposed tariffs is common to the OCC facilities tariffs in general.

35. In response to the IRCs' requests for IRUs, AT&T argues that such matters are collateral to the issue of the proposed tariff filings and their compliance with Docket NO. 20452. If the IRU question is to be addressed at all, it must be considered in a different forum with adequate notice and opportunity for comment by all interested parties, AT&T contends. 26/ AT&T also responds to WUI's allegations that rejection or suspension is required because of "ex parte" contacts by AT&T with the Bureau staff. AT&T argues basically: (a) that the meetings with the staff occurred after Docket No. 20452 had been terminated and thus are not covered by the ex parte rules, i.e., there was no proceeding instituted into the tariff filings at the time of the meetings; (b) that the meetings were held to insure adequate understanding of and

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26/ We have held that Docket No. 20452 was not a proper forum to consider the broad policy issue of whether or not IRCs or any other carriers subject to our jurisdiction should be given IRUs in domestic facilities. See, supra, n. 4. Similarly, this AT&T tariff filing is not an appropriate forum to discuss such a broad policy issue.

compliance with the Decision and not to discuss the merits and outcome of Docket No. 20452; and (c) that, in any event, WUI has shown no prejudice from the meetings. In this latter respect AT&T states that a detailed summary of the meetings was provided to the IRCs by the Bureau, supra, n. 23, upon which WUI has had full opportunity to comment in its pleadings on AT&T's proposed tariffs. Despite this opportunity, AT&T states that WUI speculates that such summaries are inaccurate or incomplete. In this regard, AT&T argues that the Court's rationale in Home Box Office, supra, is not applicable here. It contends basically that WUI has had here precisely the opportunity the Court in that case found lacking -- a statement of the alleged ex parte discussions and a full opportunity to comment. AT&T also cites the D. C. Circuit Court of Appeals July 1, 1977 decision in Case No. 74-2006, Action for Children's Television v. FCC. AT&T quotes that Court's language at p. 36 that "ex parte contacts do not per se vitiate agency informal rulemaking action, but only do so if it appears from the administrative record under review that they may have materially influenced the action ultimately taken." This is not the case here, AT&T claims. Finally, according to AT&T, the Action for Children's Television Court suggested at p. 36 that assertions such as WUI's, namely, that the Bureau's June 24, 1977, description of the alleged ex parte contacts is inaccurate or incomplete, do not warrant administration of a "lie-detector test." Thus, AT&T concludes that neither the facts or case law support a finding that WUI and other IRCs have been prejudiced by any meetings between AT&T and the Bureau staff. Accordingly, for the reasons given above, AT&T requests that we deny the IRCs' petitions for rejection, or suspension and investigation, of its proposed tariff filings.

36. We agree with AT&T that rejection of the proposed tariff filings is not appropriate here, and we generally concur in its responses to the IRCs' rejection and suspension petitions except to the extent indicated herein. 27/ Rejection is not warranted under the circumstances pertaining here. The requirement for Section 61.38 data was properly waived by the Bureau because it permitted the prompt elimination of the unjustified discrimination found in Docket No. 20452. See, supra, n. 25. Moreover, as set forth below, there exist sufficient grounds to warrant investigation of AT&T's proposed tariffs in connection with an investigation of other OCC facilities tariffs. Although we are soon instituting an investigation we find neither suspension nor an accounting order with respect to AT&T's proposed tariffs is necessary. AT&T and the IRCs

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27/ Certain IRCs in their petitions against AT&T's proposed tariff filings cite statements made by AT&T in support of the contracts during the Docket No. 20452 hearing as reasons why AT&T's tariffs should be rejected or suspended and investigated. It is hardly surprising that in opposing rejection and suspension petitions AT&T takes positions contrary to the ones it stated in the Docket No. 20452 hearing. It seems obvious that at the time of the Docket No. 20452 hearing AT&T would be unlikely to admit to unlawfully discriminatory conduct. We note, however, that AT&T does not seek reconsideration of our findings in Docket No. 20452.

are fully capable of maintaining records of any facilities rate increases resulting from AT&T's implementation of our Docket 20452 Decision and the IRCs may later avail themselves of our complaint procedures, 47 USC § 208, in the event our investigation determines that they, and other OCCs, have been overcharged for "like" facilities by AT&T. Moreover, either rejection or suspension of AT&T's proposed tariffs would delay the elimination of the unjustified discrimination found in Docket No. 20452 (see below).

If the IRCs should attempt to pass on such facilities rate increases to IRC ratepayers, we shall impose appropriate suspension and accounting orders with respect to any increases to IRC ratepayers to protect such ratepayers in the event our investigation later determines that AT&T has overcharged the IRCs and other OCCs for "like" facilities.

37. As noted previously, we found in our Docket No. 20452 Decision that the entrance and intercity facilities heretofore offered to the IRCs under general leasing contracts were "like" those facilities offered to DSCCs and SCCs under OCC facility tariffs at higher rates. Our Decision held that AT&T and the IRCs had not justified the *prima facie* discrimination in the IRCs' favor as required by Section 202(a) of the Act. See our discussion at paras. 7-25 above, where we affirm our Decision in this proceeding. Thus, to the extent that the IRCs' petitions for suspension and rejection continue to argue against our basic findings therein they are denied. AT&T has now filed proposed tariffs which it claims eliminate the unjustified discrimination which existed between AT&T's "like" facilities offerings. Although the proposed tariff applicable to entrance facilities, BOC Tariff FCC No. 4, appears to vary in some respects, *e.g.*, in applicable technical and operating arrangements, but not rates, from the tariffs governing entrance facilities for DSCCs and SCCs, the result of the tariff filing is that IRCs, DSCCs and SCCs will hereafter pay the same rates for essentially identical entrance and intercity facilities provided to them by AT&T. For this reason, we find that to the extent that AT&T's chosen action eliminates an unjustified discrimination it substantially complies with our Decision.

38. In regard to the alleged differences in OCC and IRC facilities offerings, as noted at para. 14 above, services may still be "like services" within the meaning of Section 202(a) even if some differences exist. 28/ Thus, to the extent that it appears that AT&T's proposed tariffs for IRC facilities differ in some minor respects from tariffs applicable to essentially identical facilities provided to DSCCs and SCCs we find such differences alone do not constitute non-compliance with our Decision, nor do they justify rejection or suspension of the proposed tariffs as requested by the IRCs. This is particularly true

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28/ It appears that neither AT&T nor the IRCs have identified any differences in the manner in which intercity facilities will be provided to IRCs vis-a-vis DSCCs and SCCs. Contrary to allegations by RCA Globcom we have not "prescribed" the tariffs to be filed by AT&T. We gave AT&T flexibility to exercise options of its own choosing and those options included the possible filing of tariffs. *See* our discussion at para. 5 above.

where the IRCs have failed to allege sufficient facts demonstrating a reasonable liklihood of technical or other injury if the proposed tariffs become effective. Further, it appears that AT&T has adequately justified the retention of such minor differences in accordance with the flexibility we gave it in our Decision. 29/ See 63 FCC 2d at 767, fn. 8. In this connection, see BOC Transmittal No. 5, p. 2, where AT&T explains the desirability of maintaining certain engineering and operating practices applicable to entrance facilities to conform with International Telegraph and Telephone Consultative Committee (CCITT) recommendations. Contrary to the allegations of the IRCs, particularly RCA Globcom, we believe AT&T has gone to great lengths to insure that the quality and utility of the facilities it will now provide under tariff to the IRCs will not be impaired. Based upon the steps AT&T has taken to meet the IRCs' concerns regarding assurance of quality facilities any possibility of injury to the IRCs in this respect is remote. Thus, it does not appear that AT&T is relegating IRCs to "second class" status as WUI alleges. Finally, we cannot find on the basis of the pleadings of the IRCs against AT&T's proposed tariffs that the retention of some differences makes the provision of facilities to the IRCs either more or less costly than AT&T's provision of similar facilities to DSCCs and SCCs such that different rate treatment for IRCs would be warranted.

39. In regard to the Section 214 issues raised by the IRCs, we essentially agree with AT&T's responses at para. 33 above to the IRCs' arguments. Further, as already noted, the IRCs have not alleged sufficient facts to reasonably show that the utility and quality of the facilities they will receive under tariff, rather than contract, constitute a withdrawal or impairment of service such that AT&T was required to obtain an appropriate Section 214 certificate. However, we do not agree, as AT&T seems to imply, that the mere fact a carrier has no orders for service, excuses it from the need to acquire Section 214 discontinuance authority. 30/ Finally, we noted previously, supra, n. 14, some of the circumstances under which AT&T provides group and supergroup facilities to carriers other than the IRCs. AT&T is apparently unwilling to offer facilities on this basis to the IRCs under the proposed tariffs. While we find no Section 214 violation by AT&T for reasons already given, we expect AT&T to take steps to meet the

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29/ While the use of a new tariff, BOC Tariff FCC No. 4, does not by itself constitute non-compliance with our Decision or justify rejection, we question the need for an entirely new tariff since the facilities provided to the IRCs are essentially identical to those provided the DSCCs and SCCs. It may have been more convenient in the timeframe involved to file an entirely new tariff, but it appears to us that existing OCC facility tariffs could have been utilized almost entirely, or modified slightly, to accomplish AT&T's purposes. Whether or not a new tariff is necessary can be determined in the investigation we are initiating into the OCC facilities tariffs.

30/ However, lack of demand is certainly a factor to be considered in connection with an application for discontinuance authority.

IRCs' needs as it meets the needs of other carriers.

40. Although we find that AT&T has complied with our Decision in Docket No. 20452 to the extent it eliminates an unjustified discrimination, and therefore rejection, or suspension and hearing, is not justified on the basis it did not comply (see para. 37 above), we can neither approve or disapprove at this time the provisions of the tariffs AT&T has filed. For one thing, the rates contained in the various OCC facilities tariffs, including those filed herein for the facilities in issue, are the result of negotiations conducted in Docket No. 20099 and as interim rates have not been subject to full legal and procedural scrutiny by interested parties or the Commission. We shall therefore institute an investigation into the lawfulness of such OCC facilities tariff rates by separate order in the near future. 31/ AT&T has indicated it plans to file cost and other justification for OCC facility tariffs, which would be applicable to the IRCs as well, on or before December 1, 1978. This filing, of course, would be useful in the proceeding we shall shortly designate. We realize that whether or not AT&T should file such justification sooner than the December 1, 1978 date is a question already pending before the Commission in connection with AT&T's request that certain requirements of our Docket No. 18128 Decision, namely, that all Bell service categories be targeted to earn a return of 9.5% on a revised FDC-7 basis, be waived for the "Other" category. See AT&T Long Lines letter dated August 1, 1977, and Docket No. 18128, supra. The "Other" category has been described by AT&T as including, inter alia, the OCC facilities tariffs and the facilities heretofore provided to IRCs under the general leasing contracts. We note, however, that we have never approved the December 1, 1978 date. Further, in light of the fact that we shall soon designate a proceeding we believe this date should be advanced. The Bureau, by letter dated October 4, 1977, is requesting AT&T to provide detailed information as to why the date cannot be advanced. Finally, certain IRCs claim they will be irreparably injured if AT&T's proposed tariffs become effective, due to an alleged need to increase their rates with a resultant reduction in their ability to compete with AT&T on Mainland/Hawaii routes (see para. 31 above). We note that a suspension or rejection of the AT&T tariff filing would only prolong the unjustified discrimination found to exist in Docket No. 20452. This we cannot accept. In any event, we are not convinced that automatic rate increases for IRC services will result if the AT&T tariffs become effective. 32/ The IRCs

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31/ As noted previously, the Commission accepted the Docket No. 20099 settlement but never approved it.

32/ We note that, despite the pendency of the subject AT&T tariff filings, the three IRCs serving Hawaii have filed substantial reductions in their private line rates between the Mainland and Hawaii. See ITT Worldcom Transmittal FCC No. 2033, RCA Globcom Transmittal FCC No. 4266 and WUI Transmittal FCC No. 1142.

must justify any rate increases or decreases in accordance with our Rules and the statutory requirements of the Communications Act.

41. Some additional comments are warranted with respect to allegations by certain IRCs that there were prohibited _ex parte_ contacts by AT&T with our staff and that such "contacts" have prejudiced the IRCs' rights with respect to the tariff filings at issue. At the outset, we believe the four meetings between AT&T and the Bureau staff challenged by certain of the IRCs did not fall within the scope of the Commission's _ex parte_ rules, 47 CFR §§ 1.1201 _et seq._ The first three meetings, which were held subsequent to the _Decision_ but prior to the date for filing reconsideration or clarification petitions, were for the purpose of assuring AT&T's understanding of and compliance with the Commission's Decision in Docket No. 20452. A reading of the Bureau's June 24, 1977, 5-page letter summarizing in detail these three meetings seems to make it clear that the merits and outcome of Docket No. 20452 were not to be the subject of discussion. The ground rules established for these three meetings assumed that the Commission's Decision was final and that compliance by AT&T was therefore required. At no time did the staff direct AT&T in the particular method of compliance but it merely listened to AT&T describe the voluntary actions it would take to comply with the Decision. AT&T correctly notes that no proceeding was pending with respect to the specific tariff matters discussed at these meetings. Further, as noted in the Bureau's letter, the staff spent much of its time listening to AT&T describe contractual situations, other than than the IRC-AT&T general leasing contracts, to which AT&T thought the Commission's Decision did not apply. As noted in para. 24 above, in the near future we intend to initiate a proceeding to determine the treatment of those particular situations. Thus, the IRCs will have a formal opportunity to comment on these matters, which constituted much of the discussion in the meetings, in a subsequent proceeding. The fourth and briefest meeting, held shortly after petitions for reconsideration and clarification had been filed, was of a routine nature involving an AT&T application for waiver by the Bureau of certain procedural rules applicable to tariff filings. As noted previously, _supra_, n. 25, the Bureau's subsequent grant of this waiver request was proper because it permitted a tariff filing which expeditiously removed the unjustified discrimination found in Docket No. 20452.

42. However, assuming _arguendo_ that one or more of the challenged meetings was improper under the _ex parte_ rules, there has been no showing of prejudice to the IRCs' interests as a result of the holding of any of the meetings. A detailed description of the four meetings has been provided to the IRCs upon which they have had full opportunity to comment by letters (_e.g._, RCA Globcom's July 18, 1977 letter), in their pleadings against AT&T's tariff filings (_e.g._, WUI's petition for rejection), and in a September 7, 1977 public meeting held at the Commission's offices (see the Bureau's September 9, 1977 letter summarizing this meeting). Moreover, as noted above, the IRCs will have a further opportunity to formally comment on subject matter which constituted a substantial portion of the discussion held in the meetings. Further, the IRCs have had full opportunity herein to challenge the tariffs filed by AT&T even if such tariffs were the subject of one or more inappropriate meetings.

Also, the IRCs will have a further opportunity to challenge these tariffs and rates contained therein in the investigation we are shortly designating. 33/ Under these circumstances, the IRCs allegations that they have been prejudiced and their speculative allegations that the Bureau's June 24, 1977 letter describing the meetings was inaccurate or that other meetings were held but not reported, cannot be held to have any significant relevance to the issues before us. The Bureau in its June 24 letter acknowledges that the summary of the meetings was based on individual recollections of the staff participants. That being the case, there is no way we can determine beyond any doubt the accuracy or completeness of the information provided on these meetings. Ultimately, however, it would seem that any items discussed at these meetings which were not subject to staff recollection can hardly be said to be a factor in influencing the Commission's decision-making process. Also, we agree with AT&T's analysis of the D.C. Court of Appeal's Home Box Office and Action for Children's Television decisions as they may bear on this matter. As indicated in AT&T's analysis of these cases, under any reasonable reading of the facts herein, the IRCs have been afforded a full opportunity to comment on any alleged ex parte meetings and thus have not been prejudiced.

43. In summary, we have a voluminous administrative record before us: the Docket No. 20452 record and Decision; the IRCs' petitions for reconsideration of such Decision; the IRCs' petitions against AT&T's proposed tariffs implementing the Docket No. 20452 Decision; all other miscellaneous letters and comments filed by the IRCs herein; AT&T's tariffs and transmittal letters; AT&T's responsive pleading to IRC petitions to reject or suspend; the Bureau's June 24, 1977, 5-page letter describing in detail the meetings held with AT&T; and the Bureau's summary of the September 7, 1977 public meeting. Based upon this record, and relying on our own expertise in determining the findings and conclusions to be drawn from the underlying facts of record, 34/ we find that the IRCs have had more than one opportunity to present their position on all matters concerning Docket No. 20452 and the implementation of the Decision therein by AT&T.

44. Accordingly, IT IS ORDERED, That the petitions for reconsideration of our Decision in Docket No. 20452, filed by ITT Worldcom, RCA Globcom and WUI, ARE DENIED, and that AT&T's petition for clarification IS GRANTED to the extent indicated herein;

33/ Of course, our basic Docket No. 20452 findings that the contract facilities provided to the IRCs are "like" those tariff facilities provided to the DSCCs and SCCs, and that AT&T and the IRCs have not justified the rate preference given the IRCs, are not subject to further challenge in such investigation. Nor will the question of alleged improper ex parte contacts and other issues disposed of herein be issues for investigation.

34/ See Docket No. 19989, WATS, 59 FCC 2d 671, 681, fn. 17 (1976).

45. IT IS FURTHER ORDERED, That the petitions to reject AT&T's proposed tariffs, transmitted under Transmittal Nos. 5 and 12758, respectively, filed by ITT Worldcom, RCA Globcom, TRT and WUI ARE DENIED;

46. IT IS FURTHER ORDERED, That the petitions to suspend and investigate AT&T's proposed tariffs, transmitted under Transmittal Nos. 5 and 12758, respectively, filed by ITT Worldcom, RCA Globcom and WUI ARE GRANTED to the extent indicated herein and OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Acting Secretary

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TARIFF DEPARTMENT

W. E. Albert
Administrator Rates and Tariffs

AT&T Long Lines

Room 4C104
Bedminster, New Jersey 07921
Phone (201) 234-8104

Zimmerman 8146

October 25, 1977

Application No. 1249

Barb

See me re filing this in DN 20452 "Right place"

Secretary
Federal Communications Commission
Washington, D. C. 20554

Attention: Common Carrier Bureau

Application is hereby made for special permission to file, on less than statutory notice, amendments to the list of rate centers in Tariff FCC No. 264 and amendments to the list of Category 'A' Rate Centers in Tariff FCC No. 260, to become effective on October 28, 1977, coincident with the effectiveness of Bell System Operating Companies Tariff FCC No. 4.

On May 26, 1977, AT&T filed Bell System Operating Companies Tariff FCC No. 4 in accordance with the Commission's Final Decision and Order in Docket 20542. The original effective date of this tariff was August 25, 1977, but has been deferred on several occasions and this tariff is now scheduled to become effective October 28, 1977. Tariff FCC No. 4 offers facilities to Other Common Carriers (authorized by the Commission to furnish overseas telecommunications services) between their operating centers and overseas cable stations, radio sites and satellite earth stations utilized by the Telephone Company in the provision of its authorized overseas services. The rates for these facilities, which have terminals in different states, are the same as those specified in Tariff FCC No. 266.

Because these locations will be used as points of connection with overseas facilities, the same criteria used in classifying rate centers for International Boundary Points have been applied. We have determined, using these criteria, that the following locations qualify as Category 'A' Rate Centers for this purpose and have established rate centers to designate these locations as follows:

Carmel Valley Overseas Connection Point, California - Jamesburg ✓

? Canoga Park Overseas Connection Point, California - Triunfo Pass [illegible] location

San Luis Obispo Overseas Connection Point, California Hawaii 3

Homestead Overseas Connection Point, Florida - Planned for a AT&T earth station

Andover Overseas Connection Point, Maine Andover

Narragansett Overseas Connection Point, Rhode Island Green Hill

Rowlesburg Overseas Connection Point, West Virginia Etam

All other locations used as points of connection with overseas facilities are classified as Category 'B'.

For the purpose described above, a waiver of Part 61.58 of the Commission's Rules is requested. In accordance with Paragraph 17, Footnote 8 of the Commission's Final Decision and Order in Docket 20452, a waiver of Section 61.38 of the Rules is also requested. Illustrative tariff pages are attached.

Administrator Rates and Tariffs

Attachments:
  Duplicate Letter
  Illustrative Tariff Pages
cc: International Record Carriers

C. E. Yates
Rate and Tariff Director

AT&T
American Telephone and
Telegraph Company
195 Broadway
New York, N.Y. 10007
Phone (212) 393-8155

October 27, 1977

Transmittal No. 10

Secretary
Federal Communications Commission
Washington, D.C. 20554

Attention: Common Carrier Bureau

The accompanying tariff material is sent to you for filing in compliance with the requirements of the Communications Act of 1934, as amended, issued by the Bell System Operating Companies and bearing Tariff F.C.C. No. 4, Overseas Connecting Facilities for Other Common Carriers. This material consists of original and revised tariff pages as indicated on the following check sheet:

Tariff F.C.C. No.	Check Sheet Revision No.
4	4th Revised Page 1

This filing, effective October 28, 1977, under authority of Special Permission No. 8619 of the Federal Communications Commission, provides for the listing of this tariff's Concurring Carriers, in addition to several minor text changes and typographical corrections.

Acknowledgement and date of receipt of the filing are requested. A duplicate letter of transmittal is attached for this purpose.

All correspondence and inquiries in connection with this filing should be addressed to C. E. Yates, Rate and Tariff Director, Room No. 30-1570, American Telephone and Telegraph Company, 195 Broadway, New York, New York 10007.

C E Yates
KRP

Attachments:
  Duplicate Letter
  Tariff Pages
Copy of Letter and Pages sent to:
  Commerical Contractor
  Parties to Settlement Agreement, Docket 20099

BELL SYSTEM OPERATING COMPANIES

TARIFF F.C.C. NO. 4
4th Revised Page 1
Cancels 3rd Revised Page 1
Effective: October 28, 1977

Issued: October 27, 1977

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

CHECK SHEET

Pages 1 to 19, inclusive of this tariff are effective as of the dates shown. Original and revised pages as named below and (D)(x) contain all changes from the original tariff that are in effect on the date hereof.

Page	Number of Revision Except as Indicated
Title	1st*
1	4th*
2	1st*
4	1st*
4.1	Original*
7	1st*
9	1st*
13	1st*
15	1st*
16	1st*

(x) No longer applicable.
* Page issued October 27, 1977.

TARIFF F.C.C. [illegible]
1st Revised Title Page
Cancels Original Title Page
Effective: October 28, 1977

Issued: October 27, 1977

OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

REGULATIONS AND SCHEDULE OF CHARGES

Applying to the provision, to Other Common Carriers authorized by the Federal Communications Commission to furnish overseas services, of (1) overseas connecting facilities between specified points which are located in different exchanges, which are located in two different states, where one point (A) is a satellite earth station, radio site or overseas cable station utilized by the Telephone Company in the provision of its authorized overseas services or (B) is a point of connection with facilities provided by an other telephone company which connect to such earth stations, radio sites or cable stations, (2) the portion within the United States of overseas connecting facilities (T)(x) which are provided to a point of connection with facilities extending beyond the boundaries of the United States which are furnished by a Foreign Administration and which connect to such earth stations, radio sites or cable stations and (3) overseas connecting facilities between specified points which are located in different exchanges, which are located within the same state, where one point (A) is a satellite earth station, radio site or overseas cable station utilized by the Telephone Company in the provision of its authorized overseas services or (B) is a point of connection with facilities provided by an other telephone company which connects to such earth stations, radio sites or cable stations where such specified points are located within the operating territories of the Issuing Carriers listed following:

ISSUING CARRIERS

American Telephone & Telegraph Company Long Lines Department Bedminster, New Jersey 07921	By W. E. Albert, Administrator Rates and Tariffs
New Jersey Bell Telephone Company 540 Broad St., Newark, New Jersey 07101 For the State of: New Jersey	By B. M. Hartnett, Jr., Vice President and General Counsel
Pacific Telephone and Telegraph Company, The 140 New Montgomery St., San Francisco, California 94105 For the State of: California	By F. M. Widener, Assistant Vice President
Southern Bell Telephone and Telegraph Company P.O. Box 2211, Atlanta, Georgia 30301 For the State of: Florida	By Boyd M. Guttery, Assistant Vice President

Facilities are provided for the transmission of intelligence by electrical impulse, principally by means of wire, radio or a combination thereof.

All material contained herein is filed in compliance with the Final Decision and Order of the Federal Communications Commission in Docket No. 20452 adopted March 8, 1977 under authority of Special Permission No. 8372 of the Federal Communications Commission.

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OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

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OVERSEAS CONNECTING FACILITIES FOR OTHER COMMON CARRIERS

EXPLANATION OF SYMBOLS

(C) - to signify changed regulation

(D) - to signify discontinued rate or regulation

(I) - to signify increase

(N) - to signify new rate or regulation

(R) - to signify reduction

(S) - to signify reissued matter

(T) - to signify a change in text but no change in rate or regulation

EXPLANATION OF ABBREVIATIONS

ac - alternating current

add'l - additional

db - decibel

f - Frequency

hz - Hertz

kbps - Kilobits per second

OCC - Other Common Carrier

rms - root-mean-square

REGISTERED SERVICE MARKS AND TRADEMARKS

None

Certain material omitted from this page now appears on Original Page 4.1.

CONCURRING CARRIERS

(N)(x)

For facilities provided to rate centers of specific locations in their territory, the following carriers concur in the regulations and rates as set forth in this tariff applying to the provision of (1) overseas connecting facilities between specified points which are located in different exchanges, which are located in two different states, where one point (A) is a satellite earth station, radio site or overseas cable station utilized by the Telephone Company in the provision of its authorized overseas services or (B) is a point of connection with facilities provided by an other telephone company which connect to such earth stations, radio sites or cable stations and (2) the portion within the United States of overseas connecting facilities which are provided to a point of connection with facilities extending beyond the boundaries of the United States which are furnished by a Foreign Administration and which connect to such earth stations, radio sites or cable stations.

Bell Telephone Company of Pennsylvania, The; Philadelphia, Pennsylvania
Diamond State Telephone Company, The; Philadelphia, Pennsylvania
Chesapeake and Potomac Telephone Company, The; Washington, D.C.
Chesapeake and Potomac Telephone Company of Maryland, The; Baltimore, Maryland
Chesapeake and Potomac Telephone Company of Virginia, The; Richmond, Virginia
Chesapeake and Potomac Telephone Company of West Virginia, The; Charleston, West Virginia
Cincinnati Bell Inc.; Cincinnati, Ohio
Illinois Bell Telephone Company; Chicago, Illinois
Indiana Bell Telephone Company, Incorporated; Indianapolis, Indiana
Michigan Bell Telephone Company; Detroit, Michigan
Mountain States Telephone and Telegraph Company, The; Denver, Colorado
Malheur Home Telephone Company; Ontario, Oregon
New England Telephone and Telegraph Company; Boston, Massachusetts
New Jersey Bell Telephone Company; Newark, New Jersey
New York Telephone Company; New York, New York
Northwestern Bell Telephone Company; Omaha, Nebraska
Ohio Bell Telephone Company, The; Cleveland, Ohio
Pacific Northwest Bell Telephone Company; Seattle, Washington
Pacific Telephone and Telegraph Company, The; San Francisco, California
Bell Telephone Company of Nevada; Reno, Nevada
South Central Bell Telephone Company; Birmingham, Alabama
Southern Bell Telephone and Telegraph Company; Atlanta, Georgia
Southern New England Telephone Company; The; New Haven, Connecticut
Southern Bell Telephone Company; Atlanta, Georgia
Wisconsin Telephone Company; Milwaukee, Wisconsin

CONNECTING CARRIERS

None

OTHER PARTICIPATING CARRIERS

None

REFERENCE TO OTHER TARIFFS

Wherever reference is made in this tariff to other tariffs of the Telephone Company, the reference is to the tariffs in force as of the effective date of this tariff, and to amendments thereto and successive issues thereof.

(N)(x)

Certain material on this page formerly appeared on Original Page 4.
(x) Filed under authority of Special Permission No. 8614 of the Federal Communications Commission.

2. REGULATIONS (Cont'd)

2.1 Undertaking of the Telephone Company (Cont'd)

2.1.4 Provision of Facilities

The Telephone Company, to the extent that such facilities are or can be made available with reasonable effort and after provision has been made for the Telephone Company's exchange and message telecommunications services, will provide to the OCC upon reasonable notice facilities as specified in (A) through (D) following at rates and charges specified in 4. following.

(A) Voice Grade Facilities

two point effective four wire voice grade facilities between (1) an OCC Overseas Operating Center and an overseas cable station, radio site or satellite earth station utilized by the Telephone Company in the provision of its authorized overseas services, (2) an OCC Operating Center and a point of connection with a facility provided by an other telephone company, (3) an OCC Operating Center within the conterminous United States and International Boundary Points, to Canada, as specified in the American Telephone and Telegraph Company, Long Lines Department Tariff F.C.C. No. 264. Voice grade facilities may, at the request of the OCC, be conditioned in order to meet one of the sets of conditioning characteristics specified in 3.1.2 following. (T)(x)

(B) Voice Grade Data Facilities

two point effective four wire voice grade data facilities between the points specified in (A) preceding. Voice grade data facilities may, at the request of the OCC, be conditioned in order to meet one of the sets of conditioning characteristics specified in 3.1.2 following or the conditioning characteristics specified in 3.2.2 following.

(C) 50 kbps Data Facilities

two point 50 kbps data facilities between the points specified in (A) preceding.

(D) 56 kbps Data Facilities

two point 56 kbps data facilities arranged to accommodate the transmission of either sequential synchronous bipolar data signals or sequential synchronous data signals conforming to the International Telegraph and Telephone Consultative Committee (CCITT) V.35 specifications between the points specified in (A) preceding.

2.1.5 Special Construction

Subject to the agreement of the Telephone Company, special construction of facilities as provided in 2.1.4 preceding may be undertaken at the request of the OCC to meet the needs of the OCC. Special construction is that construction undertaken:

(A) where facilities are not presently available, and there is no other requirement for the facilities so constructed,
(B) of a type other than that which the Telephone Company would normally utilize in the furnishing of its services,
(C) over a route other than that which the Telephone Company would normally utilize in the furnishing of its services,
(D) in a quantity greater than that which the Telephone Company would normally construct to serve the OCC's facility needs,
(E) on an expedited basis,
(F) on a temporary basis until permanent facilities are available,
(G) involving abnormal costs, or
(H) in advance of its normal construction.

Special construction charges will be determined as described in 4.3 following.

2.1.6 Installation and Termination of Facilities

The facilities provided under this tariff (A) will include any entrance cable or drop wiring and wiring or cable within a building necessary to terminate the facility at points reasonably situated so as to serve OCC Overseas Operating Centers and (B) will be installed by the Telephone Company to such points of termination. Wiring to apparatus or facilities of the OCC shall be furnished by the OCC from such a point of termination. (T)(x)

2.1.7 Provision of Facility Make-Up

The Telephone Company will provide to the OCC the make-up of the facilities provided under this tariff to enable the OCC to design its overall service.

2.1.8 Changes and Substitutions

The Telephone Company may, where such action is reasonably required in the operation of its business, (A) substitute, change or rearrange any telephone plant used in providing facilities under this tariff, including but not limited to, (1) substitution of different wire pairs, (2) substitution of carrier or derived facilities for wire pairs and (3) substitution of wire pairs for carrier or derived facilities, (B) change minimum network protection criteria, (C) change operating or maintenance characteristics of facilities or (D) change operation or procedures of the Telephone Company. In case of any such substitution, change or rearrangement, the facility parameters will be within the range as set forth in 3. following. The Telephone Company shall not be responsible if any such substitution, change or rearrangement renders any OCC furnished service obsolete or requires modification or alteration thereof or otherwise affects their use or performance. If such substitution, changes or rearrangements materially affect the operating characteristics of the facility, the OCC will be given adequate notice in writing. Reasonable time will be allowed for any redesign and implementation required by the change in operating characteristics.

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2. REGULATIONS (Cont'd)

2.3 Obligations of the Other Common Carrier (Cont'd)

(T)(x)

2.3.3 Equipment Space and Power

The OCC shall furnish or arrange to have furnished to the Telephone Company at no charge, equipment space and electrical power required by the Telephone Company to provide facilities under this tariff at the points of termination of such facilities. The selection of ac or dc power shall be mutually agreed to by the OCC and the Telephone Company. The OCC shall also make necessary arrangements in order that the Telephone Company will have access to such spaces at reasonable times for installing, inspecting, repairing or removing facilities of the Telephone Company.

2.3.4 Protective Apparatus

The OCC shall install and bear the cost, if any, of such additional facilities or protective apparatus which, according to accepted telecommunications industry standards, are required to be installed because of the particular use or hazardous location of the facilities provided under this tariff.

2.3.5 Inspection of Facilities

The OCC shall allow the Telephone Company to inspect at reasonable times any facilities or equipment provided by other than the Telephone Company required in accordance with 2.3.4 preceding and 2.7.1(C) following which are associated with the facilities provided under this tariff to determine if such installation complies with such Telephone Company requirements.

2.3.6 Design of Services

Subject to the provisions of 2.1.8 preceding, the OCC shall be solely responsible at its expense for the overall design of its services and for any redesigning or rearrangement of its services which may be required because of changes in facilities, operations or procedures of the Telephone Company, minimum network protection criteria or operating or maintenance characteristics of the facilities.

2.3.7 References to Telephone Company

The OCC may advise its patrons that certain facilities are provided by the Telephone Company in connection with the service the OCC furnishes to its patrons; however, the OCC shall not represent that the Telephone Company jointly participates in the OCC's services.

2.3.8 Claims and Demands for Damages

(A) With respect to claims of patent infringement made by third persons the OCC shall defend, indemnify, protect and save harmless the Telephone Company from and against all claims arising out of the combining with, or use in connection with, the facilities provided under this tariff, any circuit, apparatus, system or method provided by the OCC or its patrons.

(B) The OCC shall defend, indemnify and save harmless the Telephone Company from and against suits, claims, and demands by third persons arising out of the construction, installation, operation, maintenance, or removal of the OCC's circuits, facilities, or equipment connected to the Telephone Company's facilities provided under this tariff including, without limitation, Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the OCC's circuits, facilities or equipment, and proceedings to recover taxes, fines, or penalties for failure of the OCC to obtain or maintain in effect any necessary certificates, permits, licenses, or other authority to acquire or operate the facilities provided under the tariff; provided, however, the foregoing indemnification shall not apply to suits, claims, and demands to recover damages for damage to property, death, or personal injury unless such suits, claims or demands are based on the tortious conduct of the OCC, its officers, agents or employees.

2.4 Payment Arrangements and Credit Allowances

2.4.1 Payment of Charges and Deposits

(A) Where the provision of facilities involves an unusual investment, an OCC may be required to make payment in advance of such portion of the estimated cost of the installation or construction as is to be borne by it. The amount of the advance payment will be credited to the OCC's account as applying to the indebtedness of the OCC for the facilities provided.

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2. REGULATIONS (Cont'd)

2.6 Definitions (Cont'd)

OCC Overseas Operating Center (T)(x)

The term 'OCC Overseas Operating Center' denotes a location (A) owned or leased by the OCC over (T)(x)
which the OCC has control and provides security, (B) at which intercity facilities owned or (T)(x)
leased by the OCC terminate, (C) from which the OCC intends to furnish and administer services to multiple patrons in a specified geographical area, (D) at which the OCC has the equipment and capability to test the services provided and (E) at which the OCC has a regularly scheduled work force to accomplish such testing.

Other Telephone Company

The term "Other Telephone Company" denotes a company engaged in the business of furnishing public switched network telephone services and which is not a Bell System Operating Company.

Patron

The term "Patron" denotes a subscriber to the services of an Other Common Carrier.

Telephone Company

The term "Telephone Company" denotes the Long Lines Department of the American Telephone and Telegraph Company and its Concurring Carriers or a Bell System Operating Company which is an Issuing Carrier of this tariff and its Concurring Carriers.

2.7 Connections

2.7.1 Connection to other than Telephone Company Provided Terminal Equipment or Communications Systems

Telephone Company facilities provided under this tariff and used in OCC furnished communications services may be connected to other than Telephone Company provided terminal equipment or communication systems provided that the regulations in (A) through (C) following are met.

(A) When such OCC services using Telephone Company voice grade or voice grade data facilities are terminated in other than Telephone Company provided terminal equipment, channel derivation devices or communications systems, the OCC shall insure compliance with the minimum protective criteria set forth in (1) through (5) following:

(1) Since the facilities provided under this tariff are used in common with Telephone Company services it is necessary in order to prevent excessive noise and crosstalk that the power of the signal applied to the Telephone Company lines be limited. A single valued limit for all applications cannot be specified. Therefore, the power of the signal in the band above 300 Hertz which may be applied by the other than Telephone Company provided equipment at the point of termination will be specified by the Telephone Company for each application to be consistent with the signal power allowed on the telecommunications network.

(2) To protect Telephone Company services from interference at frequencies which are above the band of facilities provided, the Telephone Company will specify the acceptable signal power in the following bands which may be applied by the other than Telephone Company provided equipment or communications system at the point of termination to insure that the input to the Telephone Company facilities shall not exceed the limits set forth below:

- the power in the band from 3,995 Hertz to 4,005 Hertz shall be at least 18 db below the power of the signal as specified in (A)(1) preceding.
- the power in the band from 4,000 Hertz to 10,000 Hertz shall not exceed 16 db below one milliwatt.
- the power in the band from 10,000 Hertz to 25,000 Hertz shall not exceed 24 db below one milliwatt.
- the power in the band from 25,000 Hertz to 40,000 Hertz shall not exceed 36 db below one milliwatt.
- the power in the band above 40,000 Hertz shall not exceed 50 db below one milliwatt.

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3. DESCRIPTION OF FACILITIES

3.1 Voice Grade Facilities

A voice grade facility is a communications path between two points comprised of any form or configuration of physical plant capable of and typically used in the telecommunications industry for the transmission of the human voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hertz and as more particularly described in 3.1.1 and 3.1.2 following.

3.1.1 Effective Four Wire

An effective four wire voice grade facility is a two point facility consisting of two separate one-way electrical paths each capable of accommodating voice grade transmission (one for each direction) having the following characteristics:

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db.

(B) The loss deviation with frequency (from a 1000 Hz reference) shall not exceed
-1 db to +12 db* between 300 and 3000 Hz,
-2 db to +8 db between 500 and 2500 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 1750 microseconds between 800 and 2600 Hz.

(D) The manner in which voice grade facilities provided under this tariff are connected to overseas facilities will be determined jointly by the involved carriers and Foreign Correspondents.

3.1.2 Conditioning

Voice grade or voice grade data facilities have one of the following sets of characteristics when conditioned. These characteristics are not represented to apply to the entire service furnished by the OCC to its patrons, but only to the facilities provided under this tariff when not connected to the facilities of the OCC. (T)(x)

Type C1

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-1 db to +3 db between 1000 and 2400 Hz,
-2 db to +6 db between 300 and 2700 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 1000 microseconds between 1000 and 2400 Hz.

Type C2

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-1 db to +3 db between 500 and 2800 Hz,
-2 db to +6 db between 300 and 3000 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 500 microseconds between 1000 and 2600 Hz, a maximum difference of 1500 microseconds between 600 and 2600 Hz, a maximum difference of 3000 microseconds between 500 and 2800 Hz.

Type C4

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-2 db to +3 db between 500 and 3000 Hz,
-2 db to +6 db between 300 and 3200 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 300 microseconds between 1000 and 2600 Hz, a maximum difference of 500 microseconds between 800 and 2800 Hz, a maximum difference of 1500 microseconds between 600 and 3000 Hz, a maximum difference of 3000 microseconds between 500 and 3000 Hz.

---

* Note: "+" means more loss, and "-" means less loss, than at 1000Hz.

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3. DESCRIPTION OF FACILITIES (Cont'd)

3.1 Voice Grade Facilities (Cont'd)

3.1.2 Conditioning (Cont'd)

Type C5

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The loss deviation with frequency (from 1000 Hz reference) shall not exceed
-1.0 db to +3.0 db between 300 and 3000 Hz,
-0.5 db to +1.5 db between 500 and 2800 Hz.

(C) The envelope delay distortion shall not exceed a maximum difference of 100 microseconds between 1000 and 2600 Hz, a maximum difference of 300 microseconds between 600 and 2600 Hz, a maximum difference of 600 microseconds between 500 and 2800 Hz.

3.2 Voice Grade Data Facilities

3.2.1 A voice grade data facility is a facility of approximate bandwidth of 300 to 3000 Hz suitable for data transmission, remote metering, supervisory control and miscellaneous signaling purposes. Technical characteristics of these facilities will be the same as specified in 3.1.1 and 3.1.2 preceding.

3.2.2 Voice grade data facilities have the following characteristics when D1 conditioned.
These characteristics are not represented to apply to the entire service furnished (T)(x)
by the OCC to its patron, but only to the facilities provided under this tariff when |
not connected to the facilities of the OCC. (T)(x)

Type D1

(A) The calculated 1000 Hz insertion loss between 600 ohm terminations will be within the range of 0 to 16 db for effective four wire facilities.

(B) The signal to C-notched noise ratio shall be 28 db or greater.

(C) The nonlinear signal to second order distortion shall be 35 db or greater and the nonlinear signal to third order distortion shall be 40 db or greater.

3.3 50 kbps Data Facilities

A 50 kilobit per second data facility is a two point facility consisting of two separate one-way electrical paths (one for each direction) each capable of accommodating sequential synchronous data transmission at the rate of 50 kilobits per second (50 kbps).

3.4 56 kbps Data Facilities

A 56 kbps data facility, capable of accommodating any one of the following, is a two point facility consisting of two separate one-way electrical paths (one for each direction).

- to accommodate the transmission of sequential synchronous bipolar data signals at a rate of 56 kbps. Data signals, including timing and control where provided, exchanged at the interface between equipment provided by other than the Telephone Company and the Telephone Company-provided facility shall be as specified by the Telephone Company. Electrical, mechanical and functional specifications for these interfaces are available from the Telephone Company upon request. No voice grade facility will be provided for control purposes.

- to accommodate the transmission of sequential synchronous data signals at a rate of 56 kbps conforming to the International Telegraph and Telephone Consultative Committee (CCITT) V.35 specifications. No voice grade facility will be provided for control purposes.

4. RATES AND CHARGES

For the purpose of this section, the following regulations apply:

(A) When a facility is provided to a point of connection with an other telephone company or Foreign Administration, such a point of connection is considered as a terminal point for the purpose of determining facility mileage.

(B) When a facility is provided to a point of connection with a Foreign Administration, the rates and charges for such facilities are the same as the rates specified for facilities whose terminal points are located in different exchanges in different states.

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LAW DEPARTMENT

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American Telephone and
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November 3, 1977

Mr. Walter R. Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Hinchman:

This is in response to your letter of October 4, 1977, Reference 9550, regarding American Telephone and Telegraph Company's ("AT&T") August 1, 1977, request for waiver of the requirements of the Commission's Decision in Docket 18128 for Category "Other".

At the outset, we would like to comment on the relationship between Category "Other" and the offering of facilities to Other Common Carriers ("OCCs") as contained in the various facility tariffs filed with the Commission pursuant to the Settlement Agreement in FCC Docket 20099. With the exception of interstate facilities provided to The Western Union Telegraph Company under contracts, the only facilities furnished to OCCs which are presently included in Category "Other" are those provided under nationwide uniform rates pursuant to Tariffs F.C.C. Nos. 266 and 268. The vast majority of facilities furnished to OCCs is encompassed within the individual tariffs filed with this Commission by the Bell System Operating Companies ("Operating Companies"). For the reasons set forth in paragraph 4 of our Reply to the Oppositions of Western Union and MCI Telecommunications Corporation, neither the revenues nor the costs associated with such tariffs are included in Category "Other". We believe that there may be some misunderstanding on this point in that your letter indicates that action on the waiver request should somehow be contingent upon receipt of detailed information concerning the development of the costs underlying the facility tariffs. We do not believe that this should be the case. The minimal amount of OCC facilities contained in Category "Other" does not warrant withholding of the requested waiver and we respectfully urge the Commission to promptly grant it.

The other matter addressed in your letter relates to Bell System plans to file cost supported OCC facility tariffs. As you know, the current OCC facility tariff rate levels were not determined on the basis of costs. The Settlement Agreement in F.C.C. Docket No. 20099 provided that rate revisions to the existing OCC facility tariffs could not become effective for an "Interim Period" of not less than 18 months. The purpose of this Interim Period was to permit the Bell System and the OCCs to direct their resources toward implementation of numerous new engineering and operational practices, to provide a period of rate stability for the OCCs and to provide the Bell System with an opportunity t develop the procedures for and to conduct the necessary studies.

The development of post-interim OCC facility tariffs has been an important Bell System commitment since the Docket 20099 Settlement Agreement. One of our early developmental conclusions was that simply providing cost data relative to the existing OCC facility tariffs was neither a practical nor a sufficient approach for the post-interim tariff filings. This was true primarily because of the twenty-one tariffs, each based on different rate structures. These varied rate structures would have made the development of uniform cost study procedures for use by the Operating Companies so complicated as to be impractical. Thus, AT&T has developed a plan, described below, which preserves the many satisfactory operating arrangements that are contained in the Settlement Agreement and, at the same time, provides for a consistent rate structure for OCC facility tariffs as well as for comparable revisions to AT&T's interstate private line tariffs. Although a considerable amount of work has been done, much remains to be accomplished.

Two new OCC facility tariffs will replace the twenty-one tariffs now on file with the Commission. The first will be an offering of local distribution facilities within an exchange. To assure uniform application, it will contain a single regulations section consistent with those regulations agreed to during the Docket No. 20099 negotiations. Further, it will provide a nationwide uniform rate structure with individual rate levels for each state. The Operating Companies will be responsible for developing its rates and for administering the tariff. The second tariff will be an offering of interexchange facilities. Its regulations will also be consistent with the Settlement Agreement and it will contain a uniform rate structure with a nationwide rate schedule. This tariff will be administered by Long Lines.

The post-interim tariffs will include a number of significant improvements over the existing OCC facility tariffs. Rates for OCC local distribution facilities will reflect geographical difference since the costs will be based on individual state cost studies. In addition, rates for local channels for use with Bell's interstate private line services will be based on the same cost analysis as rates for local distribution facilities. Thus, such local channels will be offered on a basis which will afford direct comparability with the local distribution facilities offered by the Operating Companies for use by OCCs. Tariff simplicity and standards of uniformity, which were matters of concern during the Docket No. 20099 negotiations (see Settlement Agreement, para. 1.a.), have also been addressed in our planning. AT&T believes the reduction in the number of facility tariffs from twenty-one to two and the introduction of a uniform nationwide rate structure will further Settlement Agreement objectives.

Another feature of the revised tariffs is that individual facility offerings will be more closely aligned with the specific technical parameters required by the OCCs. These new offerings will be based on engineering designs that have evolved through the Bell/OCC interactive engineering process over the last two years. It is anticipated that the facility offerings will permit simpler ordering procedures for the OCCs.

Unfortunately, the original schedule for completion of the necessary work has been delayed on several occasions by intervening Commission orders such as those in Docket No. 18123 related to cost methodology, Docket No. 20097 concerning resale and sharing, and by rulings relative to service-to-service interconnection. Each of these orders has required the reassessment of the appropriateness of the planning for post-interim tariffs and the development of those revised procedures necessary to accommodate the Commission decisions.

A major tariff restructuring of this magnitude has required the dedication of substantial resources in the AT&T General Departments, Long Lines and the Operating Companies. AT&T estimates that development, implementation and support of the post-interim tariffs will cost the Bell System approximately $40 million and involve several hundred man-years of work. The scope of the studies required for the post-interim tariffs is unprecedented in that Long Lines and the Operating Companies must, in parallel, prepare many studies to support the coordinated filing of the new tariffs. These studies are of two types:

1) Studies relative to specific pricing elements in the new tariffs

These studies require the development of both embedded and forward-looking costs for a large quantity of specific plant items. Many of the items require costing on a state average basis in order to reflect actual experience in the provisions of facilities and services. As an example, historical investments for hundreds of plant items are required at the state level. For most plant items, this requires a special analysis of historic material prices, labor and other installation costs. Gathering of this data is time consuming, difficult and expensive.

When these plant item costs are identified, it is next necessary to develop data which will allow the mixing of these units into specific pricing element "packages." The several studies necessary to develop this mixing data require sequenced steps over an extended period of time in order to assemble universes, design sampling plans, gather data from local records associated with the sampled items, and finally, perform the processing and analysis of the sample data. The gathering of the local data is a particularly laborious and time consuming operation.

2) Studies required to satisfy the Commission's rules

These studies will develop data, including projections, relating to the revenues, costs, market quantities and cost of services as required by Section 61.38 of the Commission's rules. These studies will reflect changes in several of the Interstate Service Categories established as a result of the Commission's decision in Docket No. 18128. In addition, the Operating Companies will provide cost of service studies and other data required in support of their new tariffs. These studies cannot be undertaken until the studies relative to specific pricing elements are completed.

Planning and implementation of the studies for the post-interim tariffs are proceeding as rapidly as detailed study requirements can be developed. We estimate that procedure requirements representing about 30% of the total study effort have now been specifically determined. The study workload in the Operating Companies is underway and will remain at a very high level until the studies are completed next year.

As a result of your letter, we have again reviewed our plans and schedules for completion of the post-interim tariffs. In view of the magnitude and complexity of the studies, and considering the resources that can practically be devoted to the task, we sincerely believe that it is unlikely that we can advance the schedule. In fact, the December 1, 1978 filing date represents AT&T's most optimistic view as to the completion of the study effort.

We trust this is responsive to your inquiry.

Very truly yours,

Assistant Vice President

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